AVIATION WHISTLEBLOWER PROTECTION

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HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

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AVIATION WHISTLEBLOWER PROTECTION

WEDNESDAY, APRIL 27, 1988

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:25 a.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta [chairman of the subcommittee] presiding.

Mr. MINETA. The subcommittee will please come to order.

At today's hearing we are considering legislation to protect aviation employees against management retaliation when the employee gives safety information to the Government or takes other steps to promote safety. This type of "whistleblower" legislation has been enacted to cover employees in a number of industries and Government agencies, including employees of defense contractors, employees furnishing information about violations of the Clean Water Act, nuclear power plant workers, miners, and truckers, among others.

The Aviation Subcommittee has always given top priority to ensuring that the aviation industry operates at the highest levels of safety. In the overwhelming majority of cases the management personnel of aviation companies are fully committed to safety; however, the competitive pressures of operating in a deregulated environment create temptations to cut costs at the expense of safety. To ensure that management does not give in to these temptations the FAA must serve as a cop-on-the-beat conducting frequent inspections to ensure compliance with safety regulations.

The Subcommittee has worked to prevent cutbacks in the FAA inspector work force and we have been working with the General Accounting Office and the Federal Aviation Administration to improve FAA's management of its inspector work force.

From time to time, safety can be enhanced by industry employees providing information to the FAA and other responsible Government agencies. Whistleblower legislation will ensure that threats of retaliation do not deter employees from providing needed safety information to the Government.

We have a long schedule of witnesses today, including three of our colleagues who have introduced aviation whistleblower bills, the FAA, the Administrative Conference of the United States, airline employee groups who can furnish first-hand testimony of the need for this legislation, and the Air Transport Association. These witnesses will make an important contribution to our understanding of the need for whistleblower legislation and the many substantive and procedural questions which arise in drafting a whistleblower bill. Because of the long schedule of witnesses, I will ask that all statements be limited to 10 minutes as provided in our Committee rules. Longer written statements will be received for the record.

Before we hear from our witnesses today, I would like to insert into the record, at this point, the statement of the Honorable John Paul Hammerschmidt.

[Mr. Hammerschmidt's statement follows:]

STATEMENT OF THE HONORABLE JOHN PAUL HAMMERSCHMIDT

Mr. Chairman: There are over a dozen Federal laws that protect employees who disclose unsafe practices by their employers. Nuclear power plant workers, miners, truckers, and farm workers, are protected against discharge or discrimination when acting as whistle-blowers.

I think a good argument could be made that aviation safety would be enhanced if whistle-blower protections were extended to airline employees as well. Our colleagues who have taken the initiative and introduced legislation in this area are to be commended for their efforts.

The protection provided by whistle-blower laws can help to ensure the safety of air travelers.

These laws create an environment in which an employee can bring a dangerous situation to the attention of the Government and the public without fear of retaliation by the company he works for. Such disclosures could provide a valuable source of information for the FAA, NTSB, and the Congress.

However, we do not want whistle-blower laws to be used as a tool for a disgruntled employee to harass the employer.

Nor do we want to allow these laws to be used as a way for an incompetent worker to avoid legitimate sanctions. In other words, an employee guilty of incompetence or wrongdoing should not be able to escape punishment simply by making frivolous allegations of unsafe practices against the airline. The legislation must be carefully drawn to prevent this.

There are other questions that must be addressed in this hearing as well. These include:

Whether the whistle-blower law should be administered by FAA or the Labor Department;

How long an employee should have to file a complaint;

What relief should be available to the employee;

Whether the employee must first report the safety problem to his employer and give that employer a chance to respond.

These and other questions must be addressed here. And so, Mr. Chairman, I would like to join you in welcoming our colleagues and the other witnesses here today.

Our first witnesses this morning are the distinguished Representatives, Congressman Dan Glickman, from Kansas; Congressman Gerald Kleczka, from Wisconsin; and Congressman James L. Oberstar, from Minnesota. Mr. Glickman, you may proceed.

TESTIMONY OF HON. DAN GLICKMAN, A REPRESENTATIVE IN CONGRESS FROM KANSAS; HON. GERALD KLECZKA, A REPRESENTATIVE IN CONGRESS FROM WISCONSIN; AND HON. JAMES L. OBERSTAR, A RESPRESENTATIVE IN CONGRESS FROM MINNESOTA

Mr. **GLICKMAN**. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to come before you today to discuss legislation that addresses a very serious problem in the aviation industry. Given recent events, this hearing is particularly timely and appropriate.

Many of us have been concerned about air safety and have been grappling with ways to better ensure that our skies are safe for travel and that consumers are treated fairly and equitably in the process. All the money in the world cannot completely solve these problems alone. There is the human factor that goes into maintaining, servicing, and operating aircraft. While people do make mistakes, in the case of airplanes one small mistake can cost hundreds and hundreds of lives. We must take absolutely every precaution possible to see that mistakes are corrected and appropriate and necessary steps are taken to protect against accidents.

There is considerable evidence that points to aviation employees and companies having, on occasion, deliberately covered up maintenance problems that violate the law. My office alone has received numerous calls from pilots and mechanics who say they have been intimidated and threatened by their employers for disclosing safety violations to proper authorities. Some say that they have even been demoted, transferred, or fired as a result of their actions.

The Aviation Safety Institute, a third party group which operates a hotline for reporting safety violations, receives about 2,000 calls a year from industry and Government employees reporting safety violations. Some of these reports have been so serious as to force several airlines out of business.

Just in recent months there have been numerous televised interviews of airline employees about maintenance problems they have sought to bring to their companies' attention for corrections but they have feared for their jobs to the point that they have hidden their identities during those interviews. Seeing that played out looks like something someone does when they are fighting organized crime. It should not have to come to that when someone is trying to make sure that air travel is safe.

Last year, with the help of groups like the Aviation Safety Institute, I was successful—along with this committee—in getting legislation signed into law that stiffens penalties for falsifying airline maintenance records. While that was a step in the right direction, there is yet another part of that puzzle that must be put in place: protecting employees from recrimination for reporting safety violations.

Because of all these things, I introduced, along with Congressman Molinari, a member of this committee, H.R. 4113. This legislation would provide protection to any person who has direct or indirect contact with the maintenance, operation, or servicing of aircraft from being discharged or discriminated against by their employer for reporting safety violations to appropriate Government officials.

Now, this is the part of the bill that is somewhat unique. In order to protect the employer from nuisance and frivolous complaints, the employee would first have to report the violation to his or her employer and give the employer 30 minutes in which to provide a written response to the employee regarding the allegations. When I first saw this bill with 30 minutes I thought there was a mistake; I thought it would have been 30 days, but the fact of the matter is that operationally those decisions have to be made instantaneously, and the 30-minute requirement was to deal with a situation where an airplane may be taking off imminently.

Except in the case of pilots, the provisions of this bill would not take effect unless the procedure had been followed.

If an employee believes he or she has been discharged or discriminated against, they would be able to file a complaint with the Secretary of Labor alleging such discrimination. I have used the Secretary of Labor because they have historical experience in dealing with employee and work-related discrimination.

It is a sad commentary on our society that employees in so many fields feel intimidated and threatened when it comes to disclosing important information about wrongdoing that has a direct bearing on the safety of the flying public. It is my hope that legislation such as this, or Mr. Oberstar's or Mr. Kleczka's, will lower the number of complaints about safety violations and increase pressure to see that things are done wright the first time.

Several airline companies have "whistleblower" procedures in place and I commend them for their efforts. However, the problems in aviation are so prevalent that we must assure that standards are established throughout the entire industry.

I strongly encourage you to mark one of these bills up and move it to the floor to protect aviation employees who find it necessary to blow the whistle on safety violations and to send a signal to employers that heavy-handed practices against employees who are only doing what is necessary for their own safety and that of the flying public will not be tolerated.

Thank you very much, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Glickman.

I'd like to call our next fine colleague from Wisconsin, Mr. Kleczka.

Mr. KLECZKA. Thank you, Mr. Chairman and members of the committee. Let me commend you for holding these hearings on whistleblower legislation. Also let me commend you for your leadership on H. Con. Res. 262, which provides for a full investigation of Texas Air. As a co-sponsor of the legislation I do offer you any and all of my support for that piece of legislation.

One would have hoped that there would be no need for H. Con. Res. 262, or for aviation whistleblower legislation. However, these are both responses to fallout from Congress' decision to deregulate the airline industry.

Increasing competition has put more pressure on airlines to cut corners. This has had a negative effect on labor relations within the industry. It has also narrowed the margin of safety. To me, that doesn't mean it's time to throw in the towel and reregulate aviation; but it does mean to me that it's our responsibility to enact new laws to protect the public safety and to protect those who come forward with safety concerns. Most airlines have behaved responsibly, but some have not. Certainly, no one could have foreseen the management debacle at Texas Air.

The fact that two of my colleagues have also introduced aviation whistleblower bills is a good indication that this is an issue whose time has come. I first became aware of the need for this type of protection at a Government Operations subcommittee hearing last October. Testimony at that hearing indicated that employees at a major airline were being pressured not to report safety problems; indeed, some were even fired for doing so.

At that October hearing I stated my intention to introduce a bill that would protect aviation whistleblowers, and in February of this year I did so.

Very briefly, Mr. Chairman, H.R. 4023 would provide broad aviation whistleblower protection for employees of air carriers who report air safety information to the Government; participate in a proceeding to air safety under any law of the United States; or refuse to perform an unsafe task. My bill would give those who believe they have been unfairly discharged or discriminated against 180 days after an alleged violation has occurred to file a complaint with the Department of Labor. If a violation has occurred, H.R. 4023 gives the Secretary of Labor the authority to order the person who committed the violation to take action to stop the violation and reinstate the complainant to his or her former position, together with back pay, compensatory damages, and expenses.

In addition, my bill insures that whistleblower protection will not be used as a means to harass employers, because if a complaint is frivolous or has been brought in bad faith, the Secretary of Labor may award reasonable attorney fees to the employer.

Mr. Chairman, in my comments today I'd like to focus on several key policy questions which must be addressed in any aviation whistleblower protection bill. These questions concern what agency will have investigative responsibility; what types of employees should be protected; and how much time whistleblowers should have to file a complaint.

I have carefully considered which Federal agency should be responsible for investigating violations. There are several reasons why I have concluded that the Department of Labor is the best single agency. Most importantly, good public policy requires that responsibility for all private sector whistleblower protection be assigned to one single agency. My view in this regard is supported by a report issued last year by the Administrative Conference of the United States. This report, entitled "Federal Protection of Private Sector Health and Safety Whistleblowers," recommended that Congress enact omnibus whistleblowing legislation to replace all existing Federal/private sector health and safety whistleblowing protections. Senator Metzenbaum and Chairman Hawkins have introduced bills to implement this recommendation. I support this legislation; however, since it affects so many jurisdictions, I believe it is unlikely that it will be enacted any time soon. Therefore these bills should not be used to prevent action on a separate aviation whistleblower bill.

The Metzenbaum-Hawkins legislation follows the Administrative Conference recommendation that the Department of Labor be assigned investigative responsibility for all the private sector health and safety whistleblowing retaliation cases. The Department of Labor already performs this function for whistleblowers in the nuclear industry, for truckers, and for hazardous waste workers. DOL is best qualified to resolve what is essentially a labor-management dispute about a safety matter.

I would like to emphasize that by describing a whistleblower complaint as a "labor-management dispute" I do not in any way intend to downgrade the importance of safety. It is, after all, concern about public safety which justifies whistleblower protection.

Giving whistleblower protection responsibility to the Federal Aviation Administration is not a good alternative. In light of its enforcement responsibilities, the FAA is likely to be perceived as taking sides in a dispute rather than serving an adjudicative function. The FAA also has a basic conflict of interests; as the agency responsible for ensuring commercial aviation safety, the FAA may be inclined not to side with the whistleblowers who are reporting safety problems that the FAA presumably should have discovered themselves.

The second policy concern that I would like to raise concerns the breadth of whistleblower protection coverage. It is my view that coverage should be as broad as possible. H.R. 4113, the Glickman bill, would provide effective coverage only to pilots, for all practical purposes excluding mechanics, flight attendants, and other airline employees.

If there is a concern about whistleblower protection being used to create negative publicity, let me point out that releasing information to the news media is not protected under my bill.

Clearly, the reporting of safety violations by employees to the FAA is an irritation to the employer, but this irritation does not outweigh the public benefit of providing strong whistleblower protection for all who report problems.

I would like to indicate to the subcommittee that testimony received by Representative Collins' subcommittee last October primarily concerned mechanics, not pilots. Mechanics were being pressured not to report safety violations so that pilots would have no reason to ground a plane. Surely, these employees deserve the same protection as the pilot in command.

Experience with other private sector whistleblowers who are now protected indicates that the system does not get flooded with complaints. There are approximately half a million truckers in this country who are protected by this type of legislation; yet, the DOL has actually opened up only 200 to 300 whistleblower cases per year for this group.

Finally, I would like to urge that employees be given 180 days after a violation has occurred to file a complaint. The Administrative Conference report provides strong arguments for 180 days instead of a shorter time. Their report recommends, "A single statute of limitations of not less than 180 days seems appropriate."

The Administrative Conference gave several reasons for allowing 180 days. They found that employers are unlikely to tell an employee that he or she is being dismissed as a reprisal for whistleblowing. As a result, there may be a lapse of time before the employee is aware of this possibility.

In addition, employees sometimes attempt to use internal grievance procedures before filing a complaint. Thirty days is also a short time to find a lawyer who can prepare a complaint. The Administrative Conference found that these problems resulted in many whistleblower cases being dismissed for untimeliness.

At this point I would like to conclude my testimony, Mr. Chairman, so that others can speak about why aviation whistleblower protection is so urgently needed. I am confident that the burden of proof will be met by those groups of employees who are most directly affected by this problem.

Mr. Chairman, thank you for this opportunity to testify before your subcommittee.

Mr. **Mineta**. Thank you very much, Mr. Kleczka.

Let me call on our very fine colleague from the Committee on Public Works and Transportation, Congressman Oberstar of Minnesota who chairs our Investigations and Oversight Subcommittee and has a great deal of exposure to a lot of the issues that are involved here.

Jim, please proceed in your own fashion.

Mr. **Oberstar**. I want to thank you for taking the time to focus and hold these hearings on whistleblower legislation. As Congressman Kleczka just said, it's really unfortunate that we have to be here considering such legislation, but it is necessary.

The bill that I introduced last December, H.R. 3812, arose out of hearings in our Subcommittee on Investigations and Oversight on airline maintenance and FAA surveillance of that maintenance. I'd like to focus on two instances that arose out of those hearings that are representative of many others that we uncovered in the course of our inquiry into airline maintenance and FAA's surveillance.

One of our witnesses was a pilot for a commuter airline, Captain Mary Mitton. Captain Mitton brought to the hearing a very sharp insight into the interplay between airline maintenance and FAA surveillance. She gave us very, very fine testimony with deep-seated concerns about problems with maintenance. I won't go into the substance of it. Suffice it to say that her testimony, or a part of it, appeared in the publication "Air Transport World," a relatively small, short article, but it quoted her testimony at our hearings.

Early in December—the hearings were in October—early in December, Captain Mitton was called into the office of Comair's Vice President for Operations. She was told that her remarks were inappropriate. She was advised that it was against company policy to speak to the news media and to "outsiders." She was pointedly told that in the future she should confine her remarks to "pilot representation issues."

The story didn't end there. She requested leave of absence from Comair on December 14th and 15th to testify before another governmental panel. The request was rejected. A week later she requested leave to participate in negotiations as a pilot representative on the same days, December 14, 15, and 16. That leave was approved.

So we conclude that Comair frowns on approving leave for employees whose testimony might result in publicly expressed views that are unflattering to the industry in general and to Comair in particular.

On January 14th I wrote to the President of Comair and asked assurances that no adverse action or other form of retaliation would be taken against Captain Mitton as a result of her testimony. I haven't received any response. I had staff follow up and talk with the president of the airline, and I probably will be doing the same myself very soon.

A second example came out of the same hearings on maintenance. The staff of our subcommittee investigated an incident involving Eastern Airlines and a hard landing at Tulsa. The aircraft flew on to Kansas City, and from there to Chicago. It had major structural damage; it was later discovered that they flew those next two legs of the route with a seven-foot-long crease in the fuselage.

The aircraft landed at Chicago despite concerns expressed by employees at Tulsa and Kansas City. By the time it got to Chicago the FAA had been notified. The airline suspected that something was in the works, and tried to race the FAA to pull that aircraft out of service. FAA ordered the aircraft pulled from service and Eastern received a lot of negative publicity.

Two days later, in what appeared to be an unrelated incident, Jeff McNary, a mechanic at Eastern's Kansas City facility, was fired. Included in the letter of dismissal to McNary was a reference to an earlier suspension he had received after encouraging fellow workers to use the FAA safety hotline.

The letter stated, "In February 1987 you were assessed a ten-day disciplinary suspension for encouraging mechanics in Seattle to report alleged safety or procedural violations by Eastern management to the FAA." The letter of dismissal particularly referred to previous hotline advocacy, and it sent a chilling message throughout Eastern's Kansas City work force: hotline use, or advocating use of the hotline, is unacceptable and dangerous to your job.

Was it simply a coincidence? The message was sent just two days after the company was publicly embarrassed when a "confidential" contact with FAA caused the grounding of one of its aircraft. I think not.

Several months later, two other Eastern mechanics in Kansas City were fired under questionable circumstances. The one item these mechanics had in common was that aircraft on which they worked and which in their minds were unsatisfactorily repaired were the subject of calls to the FAA hotline. Despite the fact that the calls were and are supposed to be anonymous, we learned that, obviously, it isn't difficult for management to identify the people who had enough knowledge about the incident, about the aircraft, about the circumstances and the time frame in which that call was made, to identify that individual and to take action. In both of these cases the mechanics were terminated within days of a hotline call.

I won't go into other incidents, but I think these suffice to underscore the vulnerability of airline personnel who blow the whistle on unsafe practices. These were not people who walked away from their responsibilities. They were people who worked within the system, and the system failed. They reported incidents. They reported them to supervisors. They reported them up the line as they were supposed to do within their company, but the company didn't work, and then they went to the FAA hotline. They ought to be protected when they call the need for safety to the FAA's attention.

All three of the bills that you have before you have the same objective in mind. The difference in my legislation is that the whistleblower's complaint is reviewed by the FAA. I feel that as an aviation safety issue, the agency that knows the most about aviation safety and has the principal jurisdiction, statutory responsibility, and a prime obligation to ensure safety ought to be the one involved. I don't have any objection if you think there is a better process, but it seems to me that this keeps the whole issue within the aviation community and keeps a focus on aviation safety.

There has been some discussion about a "frivolous complaint" section. I haven't found that mechanics, flight attendants, or pilots engage in frivolous action. They know that their responsibility first of all is to safety. Institutionally their responsibility is to their company, and if that doesn't work, they ought to have a safety valve. That should be the FAA and the FAA hotline, which is now in operation. But they ought to be protected when their conscience and their sense of duty to safety compel them to go outside the company to the FAA and say, "We have an unsafe condition." They ought not to have to lay their jobs on the line to protect the lives of other people.

Every one of the people I have talked to has said, "Our first responsibility is to the company. But if there is no satisfactory response, there is only one place we can go, and that's to the FAA." They've done it, and I think they should be protected in that respect.

I think also that the FAA should improve and expand the hotline reports and procedures involving hotline reports. The hotline shouldn't simply be operated with a live voice only during the Washington workday. It ought to be available for extended periods of time.

As you consider the legislation before you, I think you ought to just ask a question: why is it that almost every public safety industry with the exception of aviation has whistleblower protection for its employees? Why, as we in this Public Works Committee have learned in the clean water area, can a worker for a manufacturing firm or a publicly-owned treatment plant be protected and be safe in his job, not be fired, if he reports to EPA that the company is illegally discharging toxics in a stream, but a mechanic with an airline can be fired if he or she reports to the FAA a serious safety violation? They deserve that protection, too.

Mr. MINETA. Thank you very much, Mr. Oberstar, Mr. Glickman, Mr. Kleczka, for your very fine testimony.

The three bills differ as to the employees who would be protected, so I would appreciate your comments on two questions.

First of all, should protection be extended to employees of air carriers only, or should we also cover other aviation companies such as repair stations and manufacturers?

Secondly, for air carriers, should all employees be covered or only those employees who are carrying out activities that are regulated by FAA? What about a baggage handler who reports an unsafe condition?

Mr. OBERSTAR. Mr. Chairman, I thought about the matter of the manufacturers. I think that's beyond the purview or the focus of our Subcommittee on Investigations and Oversight. My legislation was aimed at the "worst abuse" area and the most vulnerable employees, those who are directly involved in safety. My preference would be to limit the focus of the legislation or its reach to those who have a direct responsibility for safety. I don't have any experience or don't know of any circumstance with baggage handlers who might uncover unsafe conditions; that would be something that the committee might want to pursue further. I don't know of any compelling evidence that would suggest that we should protect baggage handlers. I don't think that it ought to extend into aircraft manufacturing.

Repair stations—I can think of the Tulsa incident, again, where American was doing the maintenance for Eastern under contract. Eastern doesn't maintain a maintenance station there. Now, that's a perfectly acceptable practice within the industry and with FAA procedures. Eastern has a contract with American under which American employees do maintenance according to Eastern's maintenance manual. In that situation, if the mechanic—and we asked this question in the course of our hearing: "If you were doing this under American's manual, would you have followed a different procedure?" The answer was, "Yes, we would have done a much more thorough inspection, but we were doing it under Eastern's contract."

So the question I have there is evaluation of the circumstances. You have a fine line. You might have some problem there, that an American mechanic blows the whistle because the aircraft wasn't maintained the way American would do it when they are actually under contract to Eastern.

It's something to think about. I wouldn't want to complicate this legislation too much.

Mr. GLICKMAN. In my bill—actually, all the bills are relatively similar, but my bill includes anybody not employed by the Federal Government whose job relates directly or indirectly to, one, the maintenance or operation of civil aircraft; and two, the provision of services relating to air transportation. So theoretically under my bill that could include a baggage handler if he sees that the door doesn't close properly or that they've got too many bags put in and they're not put in safely.

I don't think that you can define this too narrowly if you are concerned about safety.

I would make one point just to correct something that Mr. Kleczka just said. My bill does cover everybody, pilots, mechanics, and people who service aircraft. The requirement in my bill to notify the employer, give the 30 minutes' advance notification, is waived for pilots. It is continued for everybody else, but I have not included pilots in that provision of it.

Mr. KLECZKA. Mr. Chairman, on that last point I acknowledge my error and indicate that the gentleman's bill does make those provisions, as he states.

As far as coverage to repair stations and manufacturers, Mr. Chairman, I would prefer to leave that to the expertise of your committee. However, as far as which employees should be covered, I think the rule of thumb should be as broad as possible. As Congressman Glickman indicated, yes, a baggage handler could note some safety deficiency on an aircraft, even though he or she might not be schooled in it, but some things are quite obvious. So the legislation that I have produced would include that type of employee; however, I think that in the real world you would find very few complaints or very few instances of safety that would be noticed by that classification of employee.

Mr. MINETA. What about employees who may act in bad faith and complain to FAA when there really is no reasonable basis for concluding that there is a safety problem? Should those who do report in that manner be excluded from protection of a whistleblower law?

Mr. KLECZKA. Mr. Chairman, on that particular point, what we provide is that in frivolous-type cases the employer could seek reasonable attorney fees for his cost, and that could be awarded by DOL.

In the question, Mr. Chairman, you referred to the FAA. That assumes that that would be the agency handling this type of legislation; however, I would still like to make the case for the Department of Labor to handle these types of complaints.

Mr. GLICKMAN. The answer is yes, try to figure out a way to deal with frivolous complaints. That is why, at the suggestion of John Gallipault of the Aviation Safety Institute, we wrote in the provision the mandated requirement that the employee tell his employer of what the problem is, not just run to the FAA. If in fact you have a truly frivolous complaint, I think you ought to give the employer some ability to get himself on the record early on. It's ridiculous; you are just truly being harassing.

Mr. MINETA. Let me follow up on that. You say that the employee must disclose to the company, and yet you say that the company has 30 minutes to respond in writing. I'm wondering if that 30 minutes is a reasonable period of time.

Mr. GLICKMAN. It may not be reasonable in the broad spectrum, but the problem is that the airplane may be ready to take off. So I did not know exactly how to handle that in terms of that employer's decision to go ahead and actually release that airplane, let the pilot—or force the pilot—to take that plane off.

We used a 30 minute time just to deal with the realities of commercial flying in this country, but that time may need to be longer.

Mr. OBERSTAR. Mr. Chairman, there is no frivolous complaint provision in any other whistleblower legislation, and I think it would be unfair to include it in aviation legislation because it carries with it the assumption that there are going to be frivolous complaints or that it is a major problem. Now, I have not seen that in the aviation industry. I think the employees that we've seen in aviation—we've interviewed lots of them, dozens of witnesses, and their first responsibility is to their company. I think that if you follow the procedure in my bill, the FAA has all the expertise; they know how to sort out frivolous from serious complaints, and those will be dealt with. I think those will be sorted out.

The other thing is, how do you do this business of "in writing" by the company in the matter of giving notice to the company? We have situations where—I can see this becoming very, very technical. A complaint form, written-up documents. I think we just ought to recognize that there are procedures within the industry that are followed by the mechanic, and where there is a problem that gets to be a very serious, big issue, we don't want to have a barrage of paperwork back and forth while the aircraft is ready to taxi for takeoff.

Mr. MINETA. Let me just comment at this time—Mr. Glickman, you are needed over at the Judiciary Committee, so thank you very, very much for your testimony. I appreciate it very much.

Mr. GLICKMAN. Thank you.

Mr. MINETA. In terms of the three bills, Mr. Kleczka, you allow 180 days in which the employees would have the opportunity to file the complaint. In both Mr. Oberstar's and Mr. Glickman's, it's 30 days. Are there any pros and cons on the relative merits of 180 days versus 30 days, from either Mr. Kleczka or Mr. Oberstar?

Mr. KLECZKA. Based on the study that we reviewed, Mr. Chairman, it was their recommendation. I think that be it 30 or 60 or 90 days, it will be a judgment that this committee would have to make, although I do not think that the 180-day provision is excessively long.

Mr. OBERSTAR. It seems to me that 30 days is a reasonable period of time.

Mr. MINETA. Later on the Air Transport Association will say that whistleblower legislation is unnecessary because employees of most airlines are protected by collective bargaining agreements. I'd like your comments on this.

Mr. OBERSTAR. Mr. McNary and Captain Mitton certainly wouldn't agree. There is a lot of pressure brought to bear on personnel. We see it. I wish the legislation weren't necessary; if it weren't, I wouldn't be here. But I am compelled by the weight of evidence and the appeals from employees throughout the industry to present this legislation.

Mr. MINETA. Thank you very much.

Mr. Ballenger.

Mr. BALLENGER. Mr. Oberstar, I don't know whether you saw the Wall Street Journal story about the Eastern Airlines pilots. According to this story they sent in 1,300 complaints—I'm aiming this line of questioning at the frivolous suit which you said wasn't likely to occur. The story says there were 1,300 postcards sent in by Eastern Airlines pilots on safety violations, and that only six of them could be proved.

Doesn't that to some extent disprove your statement about the frivolous actions?

Mr. OBERSTAR. I'm familiar with the Eastern Airlines write-in campaign. I think one of the reasons the FAA has looked at those and thrown out so many is that they weren't specific, because people in the airline business have learned that if you are specific, the company learns very quickly who blew the whistle for what situation at what time, and reprisal is quickly taken. I think that this legislation will provide the cover for specificity and provide protection.

I think that the Eastern situation is perhaps an anomaly, but it proves the point, I think, that the more specific you are the more likely the airline is to find out who did it, as we have found in the three examples cited in my testimony, and to take action against that individual.

Mr. BALLENGER. Mr. Kleczka, obviously your bill was written before Eastern employees began their safety campaign. Don't you feel that since there is proof that there was substantial frivolity in some of these complaints, at least in my considered opinion, that your approach to dealing with frivolous claims is probably necessary?

Mr. KLECZKA. I think it is, Congressman, for reasons of balance. If in fact we are going to be fair to the employee who was wrong-fully discharged by giving him or her back pay, their job back, and things of that nature, we have to assume—although we don't like to admit it—that all employees are not dedicated to their employers and their company. For whatever reason, maybe he or she didn't get a promotion, the employee might be looking for something just to cause a little trouble. We don't like to admit that those things happen, but they do. And I think to establish basic fairness and to try to alleviate frivolous complaints, we ask very simply that that employee at that point pay the company's attorney costs. I think he or she might think twice or make sure that the complaint about to be lodged is as bona fide as possible.

Mr. OBERSTAR. Let me recall, without going into great detail, an incident that was reported in the course of our hearings on airline maintenance last October.

A mechanic who had done all the responsible things had written down in the maintenance log various procedures that should have been taken, and the corrective measures taken, on maintenance. His supervisor called him over and said, "Hey, look"—I'm paraphrasing because I don't have the exact words, but we have the transcript, because this employee felt so intimidated after several such encounters that he tape-recorded the conversation with his supervisor: "We don't want you writing up aircraft like this because that means this plane can't leave. This aircraft can't take off. You come and see me when you've got stuff like this and we'll talk it over and we'll work it out."

Well, he had tried to do that, but this guy was a hard-nose. He was being very intimidating toward this employee. This was no frivolous circumstance.

I don't want to see this thing go too far in the direction—I think you may sometimes have the situation of an errant employee who has a grudge and he's going to take something out, but I think the FAA is going to weed those out.

Mr. BALLENGER. Don't you feel that your bill actually would protect the employee that you are speaking of but would not protect, as Mr. Kleczka has said, the management or the operation of the airline from frivolous suits? I mean, 1,300 postcards going to the FAA should have had substantial effect on Eastern Airlines operation. You realize basically that it is a labor-management problem they have at Eastern Airlines. But somewhere along the line it appears——

Mr. OBERSTAR. Under circumstances where there are major labor-management problems, FAA steps up its surveillance of the carrier and increases the number of personnel committed to watching those operations. The FAA was aware of those postcards coming in and didn't take action until the Secretary of Transportation ordered FAA to look into every one of those.

So again, I don't know who might have lost their job for what you might call a frivolous action, but I sure don't like the situation of Captain Mitton.

Mr. MINETA. Thank you very much, Mr. Ballenger.

Frankly, it's the statement of the Secretary that it's 6 out of 1,300. I'm not sure how factual the "6" is. I was looking at those 1,300 postcards as well. Some of those had flight numbers; some had N-numbers. Those cards we were able to track down. I'm not sure that the 6 is a correct figure.

Congressman Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

This question that I want to ask might better be asked to some of the panelists that follow, but let me ask it anyway because you might have some idea about it.

What part does the union play in protecting employees who report safety violations?

Mr. OBERSTAR. Ordinarily, union contracts will have grievance procedures for unfair actions taken by employers. A mechanic, for example, will go to a shop steward and the shop steward will pursue the matter, so in many cases those are covered.

I'm not familiar with the Air Line Pilots Association contracts with their employers. I don't know what procedures there are, but I do know generally that there are some procedures written into the negotiating agreement.

Mr. KLECZKA. Congressman Rowland, let me concur in what Congressman Oberstar has indicated. Most union shops have grievance procedures for things like dismissal or other actions by the employer, but what we're talking about here is something above and beyond the union contract. We are talking about public safety. One could argue that we're giving these types of organized employees double protection. I think not. I think what we're doing is recognizing that public safety transcends any union contract, and this added protection—which was given to other groups in this country—should be afforded this group. For those with no union and no contract, naturally this would also cover these types of employees, too.

Mr. ROWLAND. I didn't mean for my question to suggest that I didn't think that legislation was necessary, because I do. I think we need to move in that direction too, but I was just wondering what role the unions play—I will ask that question of a later panel.

Let me ask you one other question, if I may. Some airlines were mentioned as recriminating against those who reported safety violations. What about airlines in general? Have you heard from employees of other airlines about this? Does one airline seem to be more prevalent in recriminations than others? Can you comment on that?

Mr. OBERSTAR. Well, these case examples from our committee hearings were the ones that stood out. There were others that we didn't think necessary to include in the testimony. But on the whole my experience is that we are dealing with the "last resort" type of situation, that on the whole airline employees work these matters out through the system. I don't know of any such circumstance for, say, American or United. By saying that I don't want to exclude or include any other airline. I'm just saying that I don't know of all the circumstances or all the incidents.

What I do know is that when an employee feels that he or she has to go to the FAA hotline, it's because they haven't been able to get satisfaction within the system, within the company. And then they take their case to the court of last resort, and they ought to be protected when they do that. They shouldn't simply be fired.

Now, if you have an employee that does this repeatedly and over and over again, a harassed and disgruntled employee, well, that's a situation of frivolous action that might would be weeded out by the FAA.

Mr. **Rowland**. Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much.

Mr. Inhofe.

Mr. **Inhofe**. Mr. Oberstar, you've made several references to the incident in Tulsa. Of course, that's my district, and it did receive a lot of publicity there, probably more than it did elsewhere in the Nation.

What were the pilot's actions at the site at the time that he was preparing to take off from Tulsa after the alleged hard landing. Was he aware at that time of damage that was done?

Mr. **Oberstar**. Eastern has a maintenance manual, as all airlines have, approved by the FAA. At Tulsa, Eastern has a contract with American to conduct its maintenance.

Now, American conducts maintenance according to Eastern's manual. That manual provides a three-step analysis of a hard landing. There are three categories. Eastern chose to rate that hard landing in the category that requires the least extensive inspection of the aircraft, and that was what American did. This was at night; it was in a storm; it may have been the result of wind shear. We're not alleging any fault or any improper action by the pilot, it's just that those were the circumstances. American did the inspection according to Eastern's manual.

When I asked American's Vice President for Maintenance how they would have conducted it had that been an American aircraft using American's maintenance manual, they said, "We don't have a three-point gradation. We would give it the most rigorous inspection and pull it out of service until we had done that inspection."

Now, Eastern's captain was assured by the maintenance manager that the aircraft passed inspection, and he flew on.

Mr. **Inhofe**. So he did not fly on against his judgment or——

Mr. **Oberstar**. He expressed concern about it, but, told by the maintenance manager that it had passed, he took off.

Mr. **Inhofe**. So this is not one of those situations that we sometimes hear about where allegedly a captain does not want to take his plane off but is coerced into doing so? That is not this incident?

Mr. **Oberstar**. That was the situation for Captain McLure, another Easter pilot who did not want to take off and was directed to do so by a supervisor.

Mr. **Inhofe**. Take off from where?

Mr. **Oberstar**. I don't recall where that was. We have that in our maintenance hearing record.

Mr. **Inhofe**. I see. Okay.

I'd like to ask both of you to respond to two concerns. Number one, the treatment that you in your legislation are proposing to stop or minimize the leaking of information or misinformation to the news media; and secondly, how you are specifically treating the responsibility of the employee. We've heard of some—we've used the word "frivolous" complaints, but there is also another category, and that is "damaging and false," willfully giving false information to take action against an employer for any reason one might want to do it.

I'd like to know how the two of you feel about that and how you want to address this in your legislation.

Mr. **Kleczka**. First of all, the legislation that I've introduced does not provide protection for those who leak that information to the news media. Basically that should act as a deterrent to any employee wanting to do so.

On the second question, on the matter of frivolous complaints, I think my bill out of all three is the only one that addresses that by indicating that if you want to pursue that type of action, be prepared to pay your employer's legal costs. Naturally, there will be some because the employer will prepare for all these cases not knowing whether they are frivolous or whether they're going to go the entire course of action. So my bill does make that provision.

Mr. **Oberstar**. There are five categories of conduct covered by the legislation that I've introduced: providing information to the Federal Government on violation of aircraft safety; instituting proceedings under the Federal Aviation Act; testifying at a proceeding under the Federal Aviation Act; attempting to secure employers' compliance with safety laws or safety practices; and the fifth one is participating in a case, a lawsuit, under the whistleblower act. It does not specifically cover reporting to the news media, and therefore that action would not be protected.

The other point that you raised about possible criminal action, of course, would be beyond the purview of this legislation. Anyone who would maliciously or in violation of criminal statutes take some action would be subject to the criminal statutes.

Mr. **Inhofe**. The purpose——

Mr. **Oberstar**. We are protecting what we consider to be lawful conduct.

Mr. **Inhofe**. Yes.

The purpose of the question is that if we're going to be passing legislation to take care of a problem which concerns all of us, I think at the same time we could provide some safeguards. My feeling is——

Mr. **Oberstar**. By exclusion of such action, we're being specific. Only that conduct is protected which is specifically mentioned in the law. I don't think we need to write in other safeguards.

Mr. **Inhofe**. Yes. Well, I'm just suggesting that maybe it should go further into some other areas because there is no greater disservice done to the American public than when something is leaked to the media. They sensationalize on it, and an entire industry is damaged, not just one particular company. I think it's something that we may want to consider when we look at some of the provisions in here.

That's all I have, Mr. Chairman.

Mr. **Mineta**. We have a call of the House for a vote right now, so we will recess at this point.

[Recess.]

Mr. **Mineta**. The subcommittee will please come to order.

It looks like Mr. Skaggs, Mr. Sundquist, and Mr. Packard are not here to ask questions of you; I thought they might be. In their absence let me just go ahead and excuse the both of you.

If you would care to stay and come up here and join us in the panel, please feel free to do so.

We do appreciate the leadership you've shown in putting these pieces of legislation together. Thank you very, very much.

Mr. **Oberstar**. Thank you very much, Mr. Chairman, for shouldering the burden of carrying this legislation through the hearing process and moving it forward. We really appreciate it.

Mr. **Kleczka**. Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you.

[The prepared statements of Messrs. Kleczka and Oberstar follow:]

STATEMENT OF
CONGRESSMAN GERALD D. KLECZKA

SUBCOMMITTEE ON AVIATION
APRIL 27, 1988

THANK YOU MR. CHAIRMAN FOR HOLDING TODAY'S HEARING ON AVIATION WHISTLEBLOWER PROTECTION. I WOULD ALSO LIKE TO COMMEND YOU FOR YOUR LEADERSHIP ON H. CON. RES. 262 AND URGE YOU TO MOVE FORWARD WITH IT.

ONE WOULD HAVE HOPED THERE WOULD NOT BE A NEED FOR H. CON. RES. 262 OR FOR AVIATION WHISTLEBLOWER LEGISLATION. THESE ARE BOTH RESPONSES TO FALLOUT FROM CONGRESS'S DECISION TO DEREGULATE THE AIRLINE INDUSTRY.

INCREASING COMPETITION HAS PUT MORE PRESSURE ON AIRLINES TO CUT CORNERS. THIS HAS HAD A NEGATIVE EFFECT ON LABOR RELATIONS WITHIN THE INDUSTRY. IT HAS ALSO NARROWED THE MARGIN OF SAFETY.

THAT DOESN'T MEAN IT'S TIME TO THROW IN THE TOWEL AND RE-REGULATE AVIATION. BUT IT DOES MEAN THAT IT IS CONGRESS'S RESPONSIBILITY TO ENACT NEW LAWS TO PROTECT THE RIGHTS OF LABOR AND PUBLIC SAFETY.

MOST AIRLINES HAVE BEHAVED RESPONSIBLY, BUT SOME HAVE NOT. CERTAINLY NO ONE COULD HAVE FORSEEN THE MANAGEMENT DEBACLE AT TEXAS AIR.

THE FACT THAT TWO OF MY COLLEAGUES HAVE ALSO INTRODUCED AVIATION WHISTLEBLOWER BILLS IS A GOOD INDICATION THAT THIS IS AN ISSUE WHOSE TIME HAS COME.

I FIRST BECAME AWARE OF THE NEED FOR THIS TYPE OF PROTECTION AT A GOVERNMENT OPERATIONS SUBCOMMITTEE HEARING LAST OCTOBER. TESTIMONY AT THAT HEARING INDICATED THAT EMPLOYEES AT A MAJOR AIRLINE WERE BEING PRESSURED NOT TO REPORT SAFETY PROBLEMS. INDEED, SOME WERE EVEN FIRED FOR DOING SO.

AT THAT OCTOBER HEARING, I STATED MY INTENTION TO INTRODUCE A BILL THAT WOULD PROTECT AVIATION WHISTLEBLOWERS. I INTRODUCED MY BILL, H.R. 4023, IN FEBRUARY.

DESCRIPTION OF H.R. 4023

VERY BRIEFLY, H.R. 4023 WOULD PROVIDE BROAD AVIATION WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF AIR CARRIERS WHO:

(1) REPORT AIR SAFETY INFORMATION TO THE GOVERNMENT;
(2) PARTICIPATE IN A PROCEEDING RELATING TO AIR SAFETY UNDER ANY LAW OF THE UNITED STATES; OR
(3) REFUSE TO PERFORM AN UNSAFE TASK.

MY BILL WOULD GIVE THOSE WHO BELIEVE THEY HAVE BEEN UNFAIRLY DISCHARGED OR DISCRIMINATED AGAINST 180 DAYS AFTER AN ALLEGED VIOLATION HAS OCCURRED TO FILE A COMPLAINT WITH THE DEPARTMENT OF LABOR.

IF A VIOLATION HAS OCCURRED, H.R. 4023 GIVES THE SECRETARY OF LABOR THE AUTHORITY TO ORDER THE PERSON WHO COMMITTED A VIOLATION TO:

(1) TAKE ACTION TO STOP THE VIOLATION;
(2) REINSTATE THE COMPLAINANT TO HIS OR HER FORMER POSITION TOGETHER WITH BACK PAY, COMPENSATORY DAMAGES AND EXPENSES.

IN ADDITION, MY BILL ENSURES THAT WHISTLEBLOWER PROTECTION WILL NOT BE USED AS A MEANS TO HARRASS EMPLOYERS; BECAUSE, IF A COMPLAINT IS FRIVOLOUS OR HAS BEEN BROUGHT IN BAD FAITH, THE SECRETARY OF LABOR MAY AWARD REASONABLE ATTORNEY'S FEES TO THE EMPLOYER.

MR. CHAIRMAN, IN MY COMMENTS TODAY I WOULD LIKE TO FOCUS ON SEVERAL KEY POLICY QUESTIONS WHICH MUST BE ADDRESSED IN ANY AVIATION WHISTLEBLOWER PROTECTION BILL.

THESE QUESTIONS CONCERN WHAT AGENCY WILL HAVE INVESTIGATIVE RESPONSIBILITY, WHAT TYPES OF EMPLOYEES SHOULD BE PROTECTED, AND HOW MUCH TIME WHISTLEBLOWERS SHOULD HAVE TO FILE A COMPLAINT.

AGENCY RESPONSIBILITY

I HAVE CAREFULLY CONSIDERED WHICH FEDERAL AGENCY SHOULD BE RESPONSIBLE FOR INVESTIGATING VIOLATIONS. THERE ARE SEVERAL REASONS WHY I HAVE CONCLUDED THAT THE DEPARTMENT OF LABOR IS THE BEST SINGLE AGENCY.

MOST IMPORTANT, GOOD PUBLIC POLICY REQUIRES THAT RESPONSIBILITY FOR ALL PRIVATE SECTOR WHISTLEBLOWER PROTECTION BE ASSIGNED TO A SINGLE AGENCY.

MY VIEW IN THIS REGARD IS SUPPORTED BY A REPORT ISSUED LAST YEAR BY THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES.

THIS REPORT, ENTITLED FEDERAL PROTECTION OF PRIVATE SECTOR HEALTH AND SAFETY WHISTLEBLOWERS, RECOMMENDED THAT CONGRESS ENACT OMNIBUS WHISTLEBLOWING LEGISLATION TO REPLACE ALL EXISTING FEDERAL PRIVATE SECTOR HEALTH AND SAFETY WHISTLEBLOWING PROVISIONS.

SENATOR METZENBAUM (S. 2095) AND REP. HAWKINS (H.R. 4305) HAVE INTRODUCED BILLS TO IMPLEMENT THIS RECOMMENDATION. I SUPPORT THIS LEGISLATION. HOWEVER, SINCE IT AFFECTS SO MANY JURISDICTIONS, I BELIEVE IT IS UNLIKELY

THAT IT WILL BE ENACTED ANY TIME SOON. THEREFORE, THESE BILLS SHOULD NOT BE USED TO PREVENT ACTION ON A SEPARATE AVIATION WHISTLEBLOWER BILL.

THE METZENBAUM-HAWKINS LEGISLATION FOLLOWS THE ADMINISTRATIVE CONFERENCE'S RECOMMENDATION THAT THE DEPARTMENT OF LABOR BE ASSIGNED INVESTIGATIVE RESPONSIBILITY FOR ALL PRIVATE SECTOR HEALTH AND SAFETY WHISTLEBLOWING RETALIATION CASES.

THE DEPARTMENT OF LABOR (D.O.L.) ALREADY PERFORMS THIS FUNCTION FOR WHISTLEBLOWERS IN THE NUCLEAR INDUSTRY, FOR TRUCKERS AND FOR HAZARDOUS WASTE WORKERS.

D.O.L. IS BEST QUALIFIED TO RESOLVE WHAT IS ESSENTIALLY A LABOR-MANAGEMENT DISPUTE ABOUT A SAFETY MATTER. I WOULD LIKE TO EMPHASIZE THAT BY DESCRIBING A WHISTLEBLOWER COMPLAINT AS A LABOR-MANAGEMENT DISPUTE, I DO NOT IN ANY WAY INTEND TO DOWNGRADE THE IMPORTANCE OF SAFETY. IT IS, AFTER ALL, CONCERN ABOUT PUBLIC SAFETY WHICH JUSTIFIES WHISTLEBLOWER PROTECTION.

GIVING WHISTLEBLOWER PROTECTION RESPONSIBILITY TO THE FEDERAL AVIATION ADMINISTRATION (F.A.A.) IS NOT A GOOD ALTERNATIVE. IN LIGHT OF ITS ENFORCEMENT RESPONSIBILITIES, THE F.A.A. IS LIKELY TO BE PERCEIVED AS "TAKING SIDES" IN A DISPUTE RATHER THAN SERVING AN ADJUDICATIVE FUNCTION.

THE F.A.A. ALSO HAS A BASIC CONFLICT OF INTEREST. AS THE AGENCY RESPONSIBLE FOR ENSURING THE SAFETY OF COMMERCIAL AVIATION, THE F.A.A. MAY BE INCLINED NOT TO SIDE WITH WHISTLEBLOWERS WHO ARE REPORTING SAFETY PROBLEMS THAT THE F.A.A., PRESUMABLY, SHOULD HAVE DISCOVERED.

WHAT EMPLOYEES COVERED

THE SECOND POLICY CONCERN THAT I WOULD LIKE TO RAISE CONCERNS THE BREADTH OF WHISTLEBLOWER PROTECTION COVERAGE.

IT IS MY VIEW THAT COVERAGE SHOULD BE AS BROAD AS POSSIBLE. H.R. 4113 WOULD PROVIDE EFFECTIVE COVERAGE ONLY TO PILOTS, EXCLUDING, FOR ALL PRACTICAL PURPOSES, MECHANICS, FLIGHT ATTENDANTS AND OTHER AIRLINE EMPLOYEES.

IF THERE IS CONCERN ABOUT WHISTLEBLOWER PROTECTION BEING USED TO CREATE NEGATIVE PUBLICITY, LET ME POINT OUT THAT RELEASING INFORMATION TO THE NEWS MEDIA IS NOT PROTECTED UNDER MY BILL.

CLEARLY, THE REPORTING OF SAFETY VIOLATIONS BY EMPLOYEES TO THE F.A.A. IS AN IRRITATION TO THE EMPLOYER. BUT THIS IRRITATION DOES NOT OUTWEIGH THE SAFETY BENEFIT OF PROVIDING STRONG WHISTLEBLOWER PROTECTION FOR ALL WHO REPORT PROBLEMS.

I WOULD LIKE TO REMIND THE SUBCOMMITTEE THAT THE TESTIMONY RECEIVED BY REPRESENTATIVE COLLINS SUBCOMMITTEE LAST OCTOBER PRIMARILY CONCERNED MECHANICS, NOT PILOTS. MECHANICS WERE BEING PRESSURED NOT TO RECORD SAFETY VIOLATIONS SO THAT PILOTS WOULD HAVE NO REASON TO GROUND A PLANE. SURELY, THESE OTHER EMPLOYEES DESERVE THE SAME WHISTLEBLOWER PROTECTION AS THE PILOT IN COMMAND.

EXPERIENCE WITH OTHER PRIVATE SECTOR WHISTLEBLOWERS, WHO ARE NOW PROTECTED, INDICATES THAT THE SYSTEM DOES NOT GET FLOODED WITH COMPLAINTS. THERE ARE APPROXIMATELY A HALF MILLION TRUCK DRIVERS IN THIS COUNTRY WHO ARE PROTECTED BY LEGISLATION TO H.R. 4023. YET THE D.O.L. HAS ACTUALLY OPENED ONLY 200 TO 300 WHISTLEBLOWER CASES PER YEAR FOR THIS GROUP.

NUMBER OF DAYS TO FILE COMPLAINT

FINALLY, I WOULD LIKE TO URGE THAT EMPLOYEES BE GIVEN 180 DAYS AFTER A VIOLATION HAS OCCURRED TO FILE A COMPLAINT. THE ADMINISTRATIVE CONFERENCE REPORT PROVIDES STRONG ARGUMENTS FOR 180 DAYS INSTEAD OF A SHORTER TIME. THEIR REPORT RECOMMENDS: "A SINGLE STATUTE OF LIMITATIONS OF NOT LESS THAN 180 DAYS SEEMS APPROPRIATE."

THE ADMINISTRATIVE CONFERENCE GAVE SEVERAL REASONS FOR ALLOWING 180 DAYS. THEY FOUND THAT EMPLOYERS ARE UNLIKELY TO TELL AN EMPLOYEE THAT HE OR SHE IS BEING DISMISSED AS A REPRISAL FOR WHISTLEBLOWING. AS A RESULT, THERE MAY BE A LAPSE OF TIME BEFORE THE EMPLOYEE IS AWARE OF THIS POSSIBILITY.

IN ADDITION, EMPLOYEES SOMETIMES ATTEMPT TO USE INTERNAL GRIEVANCE PROCEDURES BEFORE FILING A COMPLAINT. THIRTY DAYS IS ALSO A SHORT TIME TO FIND A LAWYER WHO CAN PREPARE A COMPLAINT.

THE ADMINISTRATIVE CONFERENCE FOUND THAT THESE PROBLEMS RESULTED IN MANY WHISTLEBLOWER CASES BEING DISMISSED FOR UNTIMELINESS.

CONCLUSION

AT THIS POINT, I WOULD LIKE TO CONCLUDE MY TESTIMONY SO THAT OTHERS CAN SPEAK ABOUT WHY AVIATION WHISTLEBLOWER PROTECTION IS SO URGENTLY NEEDED. I AM CONFIDENT THAT THAT BURDEN OF PROOF WILL BE MET BY THOSE GROUPS OF EMPLOYEES WHO HAVE BEEN MOST DIRECTLY AFFECTED BY THIS PROBLEM.

MR. CHAIRMAN, THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE YOUR SUBCOMMITTEE.

TESTIMONY OF REPRESENTATIVE JAMES L. OBERSTAR
BEFORE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
APRIL 27, 1988

Mr. Chairman, I welcome the opportunity to appear before you today in strong support of legislation to protect airline employees who report unsafe conditions to Federal agencies or to Congress.

As Chairman of the Public Works and Transportation Subcommittee on Investigations and Oversight, I have seen a clear need for whistleblower legislation. My experience prompted me to introduce such legislation, H.R. 3812, last December.

I would like to briefly mention a couple of those instances of which I have become personally aware. The first instance occurred subsequent to the Subcommittee's October 20-21 hearings on airline maintenance practices.

One of our witnesses was Captain Mary Mitton, a pilot with Comair. Ms. Mitton's experience with maintenance as a pilot for a commuter air carrier provided the Subcommittee with an important insight as we looked into air carrier maintenance activities. Following her testimony, portions of her testimony were remark in a small article in the publication Air Transport World.

In early December, Captain Mitton was summoned to the office of Comair's Vice President for Operations and advised that her remarks were inappropriate. Further, she was advised that it was against company policy to speak to the media and to "outsiders." It was suggested that in the future she should confine her remarks to "pilot representation issues."

But her story did not end with just that verbal reprimand. Captain Mitton requested leave of absence from her company on December 14th and 15th to testify before another governmental panel, but the request was rejected. However, one week later, she requested leave to participate in negotiations as a pilot representative for December 14th, 15th and 16th and that leave was approved. It appears that Comair frowns on approving leave for its employees which might result in public testimony that is unflattering to the industry in general and Comair specifically.

On January 14th, I wrote to the President of Comair and requested assurances that no adverse action or other forms of retaliation be taken against Captain Mitton as a result of her testimony. To date, I have not received in writing any such assurance.

My second example also arises out of those maintenance hearings. Subcommittee staff investigated an incident in which an Eastern Air Lines aircraft carrying revenue passengers flew from Tulsa to Kansas City to Chicago with major structural damage. This activity prompted a call to the FAA hotline by an anonymous Eastern employee. The aircraft was pulled from service in Chicago and as a result, Eastern received a great deal of negative publicity.

Two days later, in a seemingly unrelated incident, Jeff McNary, a mechanic at Eastern's Kansas City facility was fired. Included in McNary's letter of dismissal was a reference to an earlier suspension he had received after he encouraged his fellow workers to use the FAA safety hotline.

Specifically, the letter stated: "In February 1987 you were assessed a ten-day disciplinary suspension for encouraging mechanics in Seattle to report alleged safety or procedural violations by Eastern management to the FAA."

That letter of dismissal, particularly the reference to previous hotline advocacy, sent a chilling message throughout Eastern's Kansas City workforce -- hotline use or its advocacy is unacceptable. Was it a coincidence that this message was sent just two days after the company was publicly embarrassed when "confidential" contact with the FAA prompted the grounding of one of its planes?

Several months later, two other Eastern mechanics in Kansas City were terminated under questionable circumstances. The one item these mechanics did have in common was that aircraft on which they worked, and which in their minds were unsatisfactorily repaired, were the subject of calls to the FAA hotline. Despite the fact these calls were anonymous, it is not difficult for management to identify individuals who possessed enough knowledge regarding the incident to make a call. In both of these cases, the mechanics were terminated within days of the hotline call.

Mr. Chairman, these are just some examples that I have encountered as Chairman of the I&O Subcommittee. I will not go into any other anecdotal evidence because I am sure the others testifying today will further dramatize the need for this legislation.

I would briefly like to discuss the structure of my bill. All three of the current whistleblower bills that have been introduced in the House are roughly the same. Certainly, our goal is the same. The major difference is that in my legislation, the complaint of the whistleblower is reviewed by the FAA. It was my feeling that because this matter is really an aviation safety issue, the agency with jurisdiction over aviation safety should be involved. However, if a better process can be developed within the Department of Labor, then I would be supportive of such language. Providing of course, this Committee would not lose any of its oversight responsibilities.

There has also been discussion of including a "frivolous complaint" section in whistleblower legislation. Although I would see no problem in a properly drafted frivolous complaint provision, I am not convinced of the need for such language.

Such provisions are not included in any other of the whistleblower statutes, and I think it is very unfair for us to assume that the aviation workforce will abuse this process. I would prefer to require either the FAA or the Labor Department, whoever reviews the complaint, to report back to Congress if they find airlines needing protection from frivolous complaints. I frankly believe that airline workers realize whistleblower protection is very much to their benefit and abuse of the process would certainly not be in their best interest.

In closing, along with this needed legislation, FAA must be willing to improve and expand procedures regarding hotline reports. No longer should the hotline be operated with a live voice only during a Washington workday.

There is no question that whistleblower legislation will allow the FAA and Congress to receive information in a much more open environment, thereby greatly enhancing the quality of information received, and helping the government carry out its mandate of maintaining the highest level of safety possible in air commerce. No longer would employees, who currently fear loss of job, have to speak anonymously or in generalities.

However, the FAA must be able to react promptly if the situation warrants such action. Whistleblower legislation will provide the FAA with several hundred thousand more "inspectors," and they must be prepared to use reports from these inspectors in the most timely and effective manner possible.

As you consider this legislation, just ask yourself these questions. Why is it that almost every public safety industry, with the exception of aviation, has whistleblower protection for its employees? Why is it that a worker for a manufacturing firm cannot be fired if he reports to the EPA that his company is illegally discharging toxics into a stream, but a mechanic with an airline can be fired if he or she reports to the FAA a serious problem with an engine? Doesn't that employee, for the sake of our air travelling public, deserve this same protection?

I

100TH CONGRESS
2D SESSION

H. R. 4023

To amend the Federal Aviation Act of 1958 to provide protection for employees of air carriers who engage in whistleblowing activities relating to air carrier safety.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1988

Mr. KLECZKA (for himself and Mrs. COLLINS) introduced the following bill; which was referred to the Committee on Public Works and Transportation

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A BILL

To amend the Federal Aviation Act of 1958 to provide protection for employees of air carriers who engage in whistleblowing activities relating to air carrier safety.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF EMPLOYEES.

(a) GENERAL RULE.—Title XI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1501–1519) is amended by adding at the end thereof the following new section:

"SEC. 1119. PROTECTION OF EMPLOYEES.

"(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

"(1) provided, caused to be provided, or is about to provide or cause to be provided to the Federal Government information relating to air safety under this Act or any other law of the United States;

"(2) has filed, caused to be filed, or is about to file or cause to be filed a proceeding relating to air carrier safety under this Act or any other law of the United States;

"(3) testified or is about to testify in such a proceeding;

"(4) assisted or participated or is about to assist or participate in such a proceeding; or

"(5) refused to perform a task because of the employee's reasonable apprehension that performance of the task will have an adverse effect on air safety and will likely result in serious injury to himself or the public.

"(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

"(1) FILING AND NOTIFICATION.—A person who believes that he has been discharged or otherwise discriminated against by a person in violation of subsection (a) may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify the person named in the complaint and the Secretary of Transportation of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities which will be afforded to such person under paragraph (2).

"(2) INVESTIGATION; PRELIMINARY ORDER.—Within 60 days of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint of an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Within 30 days after notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested within such 30-day period, the preliminary order shall be deemed a final order which is not subject to judicial review.

"(3) Final order.—

"(A) Deadline for issuance; settlement agreements.—Within 120 days after conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated at any time on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

"(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to (i) take affirmative action to abate the violation, (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges associated with his employment, and (iii) provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee.

"(4) REVIEW.—

"(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed within 60 days from the issuance of the order of the Secretary of Labor. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

"(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

"(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever a person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

"(6) ENFORCEMENT OF ORDER BY PARTIES.—

"(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

"(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

"(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

"(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) of this section shall not apply with respect to an employee of an air carrier who, acting without direction from such air carrier (or such air carrier's agent), deliberately causes a violation of any requirement relating to air carrier safety under this Act or any other law of the United States.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—That portion of the table of contents contained in section 1 of the Federal Aviation Act of 1958 relating to title XI of such Act is amended by adding at the end thereof the following:

"Sec. 1119. Protection of Employees.
    "(a) Discrimination against employees.
    "(b) Department of Labor complaint procedure.
    "(c) Mandamus.
    "(d) Nonapplicability to deliberate violations.".

SEC. 2. CIVIL PENALTY.

Section 901(a)(1)(A) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)(A)) is amended by inserting "or 1119(a)" after "or 1115(e)(2)(B)".

[A copy of H.R. 3812, introduced by Mr. Oberstar, follows:]

I

100TH CONGRESS
1ST SESSION

H. R. 3812

To amend the Federal Aviation Act of 1958 to protect employees and promote aircraft safety.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 1987

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Public Works and Transportation

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A BILL

To amend the Federal Aviation Act of 1958 to protect employees and promote aircraft safety.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EMPLOYEE PROTECTION.

Title XI of the Federal Aviation Act of 1958 is amended by adding at the end the following:

"SEC. 1119. EMPLOYEE PROTECTION.

"(a) PROHIBITION.—

"(1) IN GENERAL.—No person shall fire, suspend, threaten to fire or suspend, in any other way discriminate against, or cause to be fired, suspended, so threatened, or discriminated against, an individual described in paragraph (2) who is an employee of such person, or an authorized representative of such an individual, by reason of the fact that such individual or representative—

"(A) has provided information to the Federal Government concerning a violation or possible violation of aircraft safety laws or practices;

"(B) has filed, instituted, or caused to be filed or instituted, any proceeding under this Act;

"(C) has testified, or is about to testify, in any proceeding resulting from administration or enforcement of this Act;

"(D) has attempted to ensure compliance by such person with aircraft safety laws or practices; or

"(E) has applied for or participated in a review under this section.

"(2) INDIVIDUAL.—An individual referred to in paragraph (1) is any individual whose employment responsibilities include one or more of the following:

"(A) Engaging or assisting in the operation of aircraft as a pilot, person in command, dispatcher, crew member, or flight attendant.

"(B) Performing, or being directly in charge of or responsible for the performance of, inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances.

"(C) Controlling, or supervising or assisting in the control of, air traffic.

"(3) EXCLUSION.—This subsection shall not apply to any individual who, acting without authority from his employer, deliberately violates any requirement of this Act.

"(b) REVIEW BY ADMINISTRATOR.—

"(1) APPLICATION.—An individual or a representative of an individual who believes that he or she has been fired, suspended, threatened, or otherwise discriminated against in violation of this section may, within 30 days after such alleged violation occurs, apply to the Administrator for a review of such firing or alleged discrimination. A copy of the application shall be provided by the individual or representative to the person alleged to have violated this section.

"(2) INVESTIGATION.—

"(A) IN GENERAL.—Upon receipt of an application under paragraph (1), the Administrator shall immediately initiate such investigation as the Administrator considers to be appropriate.

"(B) PUBLIC HEARING.—An investigation under this paragraph shall, at the request of any party to the review of which the investigation is a part, provide an opportunity for a public hearing to enable the parties to present information relating to any alleged violation of this section. The Administrator shall give the parties to such review written notice of the time and place of the hearing at least 5 days prior to the hearing. Any such hearing shall be on the record and shall be subject to section 554 of title 5, United States Code.

"(3) FINDINGS AND DECISION.—Not later than 6 months after the date of the filing of an application under paragraph (1), the Administrator shall—

"(A) complete an investigation under paragraph (2); and

"(B) make findings of fact and issue a decision based on such findings, which may include an order under paragraph (4).

"(4) ORDER.—If, as a result of an investigation under this section, the Administrator finds—

"(A) that a violation of subsection (a) has occurred, the Administrator shall issue an order requiring the party committing such violation—

"(i) to take such action to terminate the violation as the Administrator considers appropriate, including the rehiring or reinstatement, with back pay, of the individual or representative to their former position and compensation; and

"(ii) if requested by the applicant in the application for review, to pay to the individual or representative the aggregate amount of all costs and expenses (including attorney's fees) determined by the Administrator to have been reasonably incurred by the applicant or the representative for, or in connection with, the review; and

"(B) that a violation of subsection (a) has not occurred, the Administrator shall issue an order denying the application.".

SEC. 2. CONFORMING AMENDMENT.

The table of contents of the Federal Aviation Act of 1958 is amended by inserting after the item relating to section 1118 the following:

"Sec. 1119. Employee protection.".

[A copy of H.R. 4113, introduced by Mr. Glickman follows:]

I

100TH CONGRESS
2D SESSION

H. R. 4113

To amend the Federal Aviation Act of 1958 to provide aviation industry employees protection against reprisal for disclosure of information concerning threats to the safe operation of civil aircraft.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1988

Mr. GLICKMAN (for himself and Mr. MOLINARI) introduced the following bill; which was referred to the Committee on Public Works and Transportation

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A BILL

To amend the Federal Aviation Act of 1958 to provide aviation industry employees protection against reprisal for disclosure of information concerning threats to the safe operation of civil aircraft.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Aviation Whistleblower Protection Act of 1988".

SEC. 2. PROHIBITED ACTS.

Title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.) is amended by adding at the end the following:

"SEC. 613. PROTECTION OF EMPLOYEE MAKING DISCLOSURE.

"(a) PROHIBITION.—(1) It shall be unlawful for the employer of any person described in paragraph (2) to discharge or otherwise discriminate against any employee with respect to such employee's compensation or terms or conditions of employment by reason of the employee (or any person acting pursuant to a request of the employee) disclosing to an appropriate Government official information concerning any matter which the employee reasonably believes evidences a substantial and specific danger to the safe operation of civil aircraft, if before disclosing such information to the official such employee—

"(A) reports the information to the employer; and

"(B) except in the case of an employee who is a pilot, allows the employer 30 minutes within which to provide to the employee a written response which is satisfactory to the employee regarding the information.

"(2) A person is described in this paragraph if the person is not employed by the Federal Government and the employment responsibilities of the person relate directly or indirectly to—

"(A) the maintenance or operation of civil aircraft; or

"(B) the provision of services relating to air transportation.

"(b) FILING OF COMPLAINT.—Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may file (or have any person file on their behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Any such complaint may not be filed more than 30 days after the later of the date on which the violation is alleged to have occurred or the date on which the violation was discovered. Within 10 days after receipt of such complaint, the Secretary of Labor shall serve notice of the complaint on the employer named in the complaint and on the Administrator.

"(c) INVESTIGATION AND ISSUANCE OF ORDER.—(1) Upon receipt of a complaint filed under subsection (b), the Secretary of Labor shall commence an investigation of the alleged violation. Within 30 days after receipt of such complaint, the Secretary of Labor shall complete such investigation and shall provide written notice of the results of the investigation to the complainant, any person acting on behalf of the complainant, and the employer alleged to have committed such violation.

"(2) Within 90 days after receipt of a complaint filed under subsection (b), the Secretary of Labor shall issue an order *providing relief prescribed* in subsection (d) or denying the complaint, unless the proceeding on the complaint is terminated by the Secretary of Labor on the basis of a settlement agreement entered into by the Secretary of Labor and the employer alleged to have committed such violation.

"(3) An order of the Secretary of Labor under this subsection shall be made on the record after notice and opportunity for public hearing.

"(4) The Secretary of Labor may not enter into a settlement agreement terminating a proceeding on a complaint filed under subsection (b) without the participation and consent of the complainant.

"(d) RELIEF.—If, in response to a complaint filed under subsection (b), the Secretary of Labor determines that a violation of this section has occurred, the Secretary of Labor—

"(1) shall order the employer who committed the violation to take affirmative action to abate the violation;

"(2) shall order such employer to reinstate the complainant to the position the complainant held when discharged, and to restore the compensation (including back pay), employment benefits, and other terms and conditions of the complainant's employment;

"(3) shall order such employer to provide compensatory damages to the complainant; and

"(4) shall, at the request of the complainant, assess against such employer a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint on which the order was issued, as determined by the Secretary of Labor.

"(e) PROCEEDINGS; ORDERS AND FUNCTIONS OF SECRETARY OF LABOR.—Except as otherwise provided in this section—

"(1) proceedings under this section and orders of the Secretary of Labor in such proceedings shall be subject to the provisions of this Act as if such proceedings were conducted, and such orders were issued, by the Administrator; and

"(2) the Secretary of Labor shall carry out all functions under this Act with respect to such proceedings which would otherwise be the responsibility of the Administrator.

"(f) STAY OF ORDER PENDING REVIEW.—The filing of a petition for review under section 1006 with respect to an order of the Secretary of Labor under this section shall not operate as a stay of any order of the Secretary of Labor unless such a stay is ordered by the court in which such petition is properly filed.

"(g) ORDER NOT SUBJECT TO REVIEW IN OTHER PROCEEDINGS.—An order of the Secretary of Labor under this section with respect to which review may be had under section 1006 shall not be subject to judicial review in any criminal proceeding or in any other civil proceeding.

"(h) JUDICIAL ENFORCEMENT OF ORDER.—In any action under section 1007 to enforce an order under this section, the court may grant appropriate relief, including—

"(1) relief described in section 1007;

"(2) compensatory and exemplary damages; and

"(3) costs of litigation, including reasonable attorneys' fees and expert witnesses' fees.

"(i) MANDAMUS PROCEEDING.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

"(j) DEFINITIONS.—As used in this section:

"(1) The term 'appropriate Government official' includes—

"(A) any officer or employee of the Department of Transportation or the Federal Aviation Administration;

"(B) a Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment; and

"(C) any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to civil aviation.

"(2) The term 'Government agency' means any executive agency as defined in section 105 of title 5, United States Code.".

SEC. 3. PRIVATE ACTION TO ENFORCE ORDER.

Subsection (a) of section 1007 of the Federal Aviation Act of 1958 is amended by inserting "or an order under section 613(c)" after "section 401(a)".

SEC. 4. CONFORMING AMENDMENT.

The table of contents in the first section of the Federal Aviation Act of 1958 is amended by adding at the end of the item relating to title VI the following:

"Sec. 613. Protection of employee making disclosure.
  "(a) Prohibition.
  "(b) Filing of complaint.
  "(c) Investigation and issuance of order.
  "(d) Relief.
  "(e) Proceedings; orders and functions of Secretary of Labor.
  "(f) Stay of order pending review.
  "(g) Order not subject to review in other proceedings.
  "(h) Judicial enforcement of order.
  "(i) Mandamus proceeding.
  "(j) Definitions.".

Mr. **Mineta**. At this time I would like to call on Marshall J. Breger, Chairman of the Administrative Conference of the United States.

Mr. Breger, your testimony will be made a part of the record. Please introduce your colleagues and proceed in your own fashion.

TESTIMONY OF MARSHALL J. BREGER, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY EUGENE R. FIDELL, ATTORNEY, AND JEFFREY S. LUBBERS, RESEARCH DIRECTOR, ADMINISTRATIVE CONFERENCE

Mr. **Breger**. Thank you very much, Mr. Chairman. I am accompanied by Eugene Fidell, a lawyer in private practice here in Washington who served as a Conference consultant in our study of Federal protection of private sector health and safety whistleblowers, and Jeffrey Lubbers, Research Director of the Administrative Conference.

I will be brief, as you have my written statement.

I want to touch on a small number of points, but first I want to take a moment and explain what the Administrative Conference is. It is an independent Government agency which serves as a kind of in-house "think tank" for the reform of administrative procedure and governmental processes. This is its 20th year and it has provided a wide variety of proposals for the improvement of the administrative process, many of which have culminated in statutory reform or agency revisions of their rules and regulations.

Our interest in this legislation is procedural only. We make no pretense to substantive expertise in the area of aviation safety. Our concern is that there is a patchwork of bills which deal with whistleblower issues, and there has begun to be a vulcanization of procedures and a continual variation in procedures. Our view is that this is often inefficient, often unfair, and in almost all cases creates a certain degree of wastefulness.

So I want to emphasize that our bias is toward systematic legislation and a systematic review of all areas of whistleblowing in legislation such as S. 2905 in the Senate, which puts forward systematic review of all substantive areas of whistleblowing. Of course, it is your prerogative to decide substantively the special needs for airline safety legislation; and should you do so, we have a number of procedural points.

The first is that it is important to centralize the whistleblower enforcement proceedings, and we feel that the responsibility for that belongs in the Department of Labor de facto. It has now the vast majority of enforcement cases across the board, and rather than fracture and continue to divide enforcement responsibility, we think that enforcement responsibility, both in the aviation area and across the board, will be stronger if there is centralization. We feel that the Department of Labor is a natural repository because of its built-up years of expertise and because the issues that are of concern in whistleblower enforcement don't require the specialized expertise of a particular agency. They deal in the dynamics of employer-employee relations.

The second, we recommend the use of a 180-day statute of limitations. Again, uniformity; we think it's important to have a single statute of limitations across the board. There's no sense in mine legislation having 30 days and nuclear power having 60 days and aviation safety having 90 days. You might ask why 180. Basically, we feel it takes a certain amount of lead time to decide that you want to make a complaint; and since the statute of limitations is an absolute bar toward any law enforcement, you want to err to some degree on the lengthy side rather than on the shorter side, and 180 days does not seem excessive to us.

Further, we think it is important that there be a standard definition of "protected conduct," both for the aviation industry and for whistleblower legislation across the board. We take no position on what that definition of protected conduct should be. We point out that the bills before you go in different directions. Some protect persons who provide information to the Government; some protect people who are testifying or who cooperate with Government agencies; and others protect refusal to work. We urge you to look at the other whistleblower legislation and attempt to, as far as possible, seek uniformity in your standard of protection.

Finally, we think it important that there be an alternate dispute resolution option, should both parties—and should the Government—be interested. We would urge you to look at the alternate dispute resolution option in S. 2095, which lays out in statutory language an opportunity for settling without full, formal litigation.

I think it may be most useful for me to stop here and answer any questions you might have.

Mr. MINETA. Thank you very much, Chairman Breger.

Let me ask Mr. Fidell, in your study of whistleblower laws, did you get an impression as to whether these laws are really functioning satisfactorily? Are employees and employers generally satisfied with the way in which they are being administered?

Mr. FIDELL. The Administrative Conference conducted a hearing in October, 1986 at which representatives of both the employer community and the employee community—the employee bar—spoke. I think that if you could summarize the testimony that was presented, it was a recognition that there was a role for these kinds of statutes for our society in this day and age, subject to some tinkering that each side would want to do with the general outline of the protections that are in place.

The impression that I have is that there is general satisfaction with the notion of whistleblower protection. There are some concerns about specifics on a statute-by-statute basis.

Mr. BREGER. I might add that we'd be happy to provide the transcript of that hearing to the committee, should you so desire.

Mr. MINETA. Do most whistleblower statutes limit protection to information furnished to the Government in good faith? And if so, is good faith the usual test, or are there some other concepts used?

Mr. BREGER. Table 3 of Mr. Fidell's report, at A-2, lists the protected conduct in a wide variety of statutes, over 20. I hesitate to say that it's exhaustive because then you'll come up with some esoteric protection statute, people who work with marine mammals.

That makes clear that most statutes are silent as to the need for reasonable belief, but it's my understanding that the operation of the statutes—the administrative law judges interpret a reasonable belief or a good faith belief as being necessary. Whether we believe that to be objective or whether it could be subjective within the whistleblower himself—he could have a subjective good faith belief, even though the judge might say, "You're a little off the mark here." I don't believe that's been uniformly determined.

Gene.

Mr. FIDELL. I think you've accurately stated it. The judicial gloss on the statutes to the extent that the statutes don't expressly address this has looked to the reasonableness and the good faith of the individual employee's views.

We could play law professor and say, well, what if you had a complaint that was objectively reasonable but in fact the individual did not hold the view that he was purporting to hold? And so on and so forth. I don't see that that's a particularly productive inquiry. I think the test has not proven to be troublesome in the judicial gloss. The Department of Labor and the other agencies that currently administer these statutes have not stumbled in this area, and offhand I would not recommend doing anything novel in terms of addressing the standard.

Mr. MINETA. You did touch upon this, about giving the jurisdiction to investigate to the Department of Labor. I'm just wondering, are there some specific things about aviation that make it, so to speak, special that ought to be retained under the jurisdiction of the Federal Aviation Administration?

Mr. FIDELL. Let me speak to that. I think the pattern that emerges, Mr. Chairman, from Congress' prior activity in this area, which—if I can invite your attention to Table 1 on page A-1 of the study which I have prepared, the pattern which emerges is one of giving the Department of Labor the responsibility for investigation and adjudication in the first instance. If as is the case, it is the Department of Labor that is responsible for, for example, the complaints under the Energy Reorganization Act, which is the one that applies to nuclear power stations—clearly a technologically intensive, arcane area if there ever was one—then I would say that aviation safety is an a fortiori case.

It doesn't require a Ph.D. in nuclear physics to investigate and adjudicate matters of whistleblowing at a nuclear plant, and I think the same thing can be true with respect to the investigation and adjudication of aviation safety. That's not to say that they're not technically complex, but they are certainly no more complex than nuclear physics and nuclear engineering. And in fact, to focus on the technical aspects is, I think to some extent, to lose sight of what is at stake in a whistleblowing proceeding. It involves only the most—if I can say "superficial" assessment of the underlying technical matter, and a much more intensive scrutiny of the issue of retaliation.

Mr. BREGER. I would just like to underscore that. You have to separate the whistleblowing case from the enforcement case brought by EPA, brought by NRC, or brought by the FAA as to safety violations. An enforcement case is about the technical substantive area, but the whistleblowing case is about, did the person bring forth a complaint with a good faith belief? Was there retaliation against him?

So that's a kind of employer-employee dynamics issue.

Mr. MINETA. But that may be the very basis for enforcement within the agency. So in order to have that continuity, would it not maybe be preferable to have it within the Federal Aviation Administration that is able to investigate, so that substantively they are able to differentiate between the chaff and the substance? I'm wondering whether or not your interest here doesn't become more form in the sense that you want to centralize. Do you put the emphasis on, "Why should it be in Department of Labor?" "Well, because it ought to be centralized." Well, there's got to be a little more than just centralization that drives that. So I'm wondering whether you are tilting more toward form rather than substance in that instance.

Mr. FIDELL. If I can respond, Mr. Chairman, I think this is more than a matter of form. Everybody likes to have symmetry and so on, but that's not what this is really about.

The conclusion that I drew based on my review of the extant Federal legislation in this area is that questions of whistleblowing and the protection of employees against retaliation when they make safety and health complaints is itself a discrete area of the law. It is not simply a footnote to the programmatic Federal regulation in the area. It calls for different kinds of skills, it calls for different kinds of expertise, so it's not just a question of, "Well, let's put it all together because that's where Congress by chance had tended to put these things in the first place, in the Department of Labor."

So I would really stress that is this is not exalting form over substance.

In addition, there is a concern that was expressed initially with respect to the Nuclear Regulatory Commission, if I can give that illustration, and I think it was alluded to by one of the members who spoke earlier today.

Where you would combine what I call the "program agency" that has the substantive technical expertise and the adjudication of the whistleblowing function, you run the risk of a confusion of roles and a conflict of interests because in some number of cases the agency that is conducting the whistleblower adjudication or investigation is passing judgment on the efficacy of its own regulatory program, of its own effectiveness under the Aviation Act, under the Atomic Energy Act, under the Clean Water Act or Clean Air Act. That is a potential source of thwarting of the Congressional intent to protect whistleblowers.

Now, if the question is—suppose we have areas of real technical expertise that are required in order to do an intelligent job of disposing of the retaliation claim. There are techniques that are available short of merging the investigation and the adjudication functions of the whistleblowing claim into the program agency's larger mandate. These include good, solid, enduring, intelligent interaction between the Department of Labor and the program agency. For example, the Nuclear Regulatory Commission and the Department of Labor have what I refer to as a "treaty" governing their interaction in these highly technical nuclear safety cases. The same thing would take place in the legislation that I would anticipate Congress would pass between the Federal Aviation Administration and the Department of Labor. So, too, if it turns out that there is a real need for technical expertise in the rare case—and I would submit it really would be a rare case—there's no reason why the Department of Labor couldn't solicit, or consent to, active participation, perhaps as an amicus, perhaps as a provider, of expert witnesses to assist the administrative law judge in performing his function.

Mr. BREGER. If I could just go a step further on that—in our Recommendation 87-2, which is reprinted at 1 CFR 305.87-2, we underscore the need for interaction between the program agency and the investigating/adjudicating agency because if that does not occur, the involvement of the program agency might diminish. And I might say that even if you were to decide to keep this in the FAA, you would have the same problem of sufficient interaction between the safety section and the whistleblowing section.

So what's important here is to make sure that there are procedures for the program agency or program section to provide assistance to the investigative agency, and for the adjudicatory agency to report back to the program agency. I think that will solve a great deal of your concern.

Mr. FIDELL. Mr. Chairman, if I can add briefly to what Mr. Breger has said, reference was made earlier today to omnibus legislatin; and in fact, the Administrative Conference has proposed omnibus legislation.

I think it's quite important that this committee not do anything that would prejudice the large goal of omnibus legislation that would pick up not only this area but a number of other areas that are currently vested with a health and safety interest but not currently the subject of protection for whistleblowers.

My concern would be that if you did vest this authority in the meantime in the Administrator of the FAA, that would encourage the sort of centrifugal forces in here, in this area, and that would make it all the more difficult, it seems to me, when the time comes for omnibus legislation—which I hope will not be too far in the future—to bring all these things together in the kind of omnibus program that the Conference has recommended.

Mr. MINETA. Your third recommendation is that the statute of limitations not be less than 180 days; and yet, in looking at your chart on Table 1 in terms of the statute of limitations, I see that except for the Migrant, Seasonal, and Agricultural Worker Protection Act and the Surface Transportation Assistance Act, that most of the others are much shorter in duration than the 180 days that you recommend.

Any reason why you don't recommend any less than the 180 days?

Mr. FIDELL. Here I can speak as—I'm not a Government employee and I hope, Mr. Chairman, I am free to speak my own mind, and I will do so bluntly.

Mr. MINETA. You have an unexpired contract, so go ahead. [Laughter.]

Mr. FIDELL. Congress was mistaken, I think. Experience has taught that 30-day limitations and similarly lightning-fast periods of limitation are wrong. They tend to cut off cases that should not be cut off. It's not reasonable to expect a lay person with 30 days to mobilize to the extent of getting an attorney, evaluating a case, taking those steps necesary to launch a proceeding before the Department of Labor or any other adjudicatory process. A 30-day statute of limitations is simply out of keeping with the best thinking in this area, and all I can say is that there seemed—as I recall the hearing, which was quite a broad-gauge proceeding a year and a half ago, there seemed to be very little disagreement that the 30-day provisions were unreasonable, unrealistic, and unfair.

Mr. MINETA. Does the bureaucracy have a rebuttal?

Mr. BREGER. Well, no rebuttal. Just a supplemental.

The rational employee would then be urged to file any time he had any possible thought that there might be a whistleblowing case to protect his rights, and you might have more frivolous cases than if you waited. He could go see a lawyer; the lawyer would tell him, "Look, you really don't have a case here. It's not worth bringing it. It's very difficult." So you may well end up with more frivolous cases by a very short statute of limitations, as well as a bar to some real problem cases where people have been inappropriately fired or disciplined because it took them time to mobilize their resources and find out what their rights are.

Mr. MINETA. Thank you.

The gentleman from Georgia, Mr. Gingrich?

Mr. GINGRICH. Thank you, Mr. Chairman.

Thank you, Mr. Breger, for coming. I have a couple of questions I would like to pursue.

First of all, in your experience in other industries to what extent has there been a problem during labor-management disputes of false filings or a range of whistleblowing that was in fact essentially not safety-related but was simply harassment?

Mr. BREGER. Our sense is that this has not been a major problem in other industries. I have to say in all fairness that there is a uniqueness to the aviation industry. If I'm a worker in a mine, my safety is at stake; and if I complain, it's only the mine workers' safety that's at stake, whereas complaints about airline safety could, in and of themselves, sort of scare off people who fly on that airline and could be sort of uniquely damaging to a company. I think that may be a bit more of a special case in the airline situation than generally.

Mr. GINGRICH. Given that unique situation, to what extent do you think there need to be any sanctions—or do there need to be sanctions—for organizations which organize inaccurate campaigns that involved whistleblowing as a management-labor technique rather than as a public protection?

Mr. BREGER. We did not study that aspect in our study. And I think that's a legislative judgment, a substantive judgment that you all will have to make.

Mr. GINGRICH. Oh, but you will inform our judgment and help us with this.

Mr. BREGER. I have to protect myself by saying that, you see. I'll try to inform your judgement as best as I can.

It seems to me that there is a difference between these thousands of postcards—whether or not they're frivolous, I don't know—but they are in the measure of someone filing a thousand complaints to the police. The police have to look at these complaints and decide how seriously they want to look into them.

In whistleblowing proceeding, the individual employee has actually been retaliated against; and then he asks and says, "Look, the reason I was disciplined or fired was because I blew the whistle." Then you have to have a hearing on that matter. It's not costless for the employee; he has to go through a hearing, in many cases secure an attorney. There's a bit more of a tendency here for him to have at least some reason to go forward rather than with the thousand postcards which could be organized as part of a labor-management dispute.

So I would be a little chary in comparing the two kinds of cases.

Mr. GINGRICH. Mr. Fidell?

Mr. FIDELL. Obviously, the Conference has constraints on how far it can go on the substance of these things. My reaction to your question is this.

I would be very concerned about taking any step that might entrench on rights conferred by the Wagner Act in terms of concerted activity or, for that matter, rights protected by the First Amendment. But taking a broader view, if I may, the question in this context is not how complaints come up, whether it's 1,300 postcards or petitions posted in the locker room or what have you. The question is not how they come up or whether they come up in the context of acrimonious labor-management tensions, which are not uncommon in our society. The question for present purposes is, what will be the effect on the advancement of the public interest in health and safety?

I don't think the public would want to stop the flow of information that might turn up a viable safety or health concern simply because it was part of a struggle over what the next contract is going to say. So I would be very concerned about looking too much at the context out of which these things arise. Either they arise and meet the statutory standard for reasonableness of good faith and nonfrivolity, or they don't. Whether they arise in the context of some larger struggle between employers and employees—I, as a taxpayer and flier, if I may say, am not particularly interested. I just want a safe plane.

Mr. GINGRICH. So if you suddenly got 30 whistleblowing charges from a particular company, all of which were frivolous, what are the sanctions for having taken up the taxpayers' time and money and their Civil Service in dealing with those 30 frivolous claims?

Mr. FIDELL. The sanctions against any individual? You're talking about the individual——

Mr. GINGRICH. Well, let's take a hypothetical example that a labor union decided that one of their techniques would be to have 30 of their members file whistleblowing charges.

Mr. BREGER. There would have to be 30 people that would file——

Mr. GINGRICH. But to take a hypothetical example, say you are in a labor union involved in a dispute in which a significant number of your members were being laid off. Therefore you said to each member as they were laid off, "Claim it was for safety reasons."

Mr. FIDELL. What I can tell you, sir, is that I have studied the legislation and the legislation currently in place applies across a very broad range of commercial and industrial activity in this country, and to my knowledge not one of the statutes that Congress has passed thus far—and some of the contests are extremely acrimonious; these are not sort of kid-gloves labor relations situations. These are extremely bitter relations in some of these industries. Mining—I can think of no more cantankerous, acrimonious context for labor relations than mining, and there is no provision for penalizing the person who files a frivolous complaint aside from denying the complaint.

Mr. GINGRICH. In your experience or as you look at the record, how often has it been determined—to what percentage has it been determined—that in fact the person filing the charges was not a whistleblower, that they were being dismissed for legitimate grounds?

Mr. FIDELL. I'm sorry, I'm not sure I got that.

Mr. GINGRICH. How often has it been determined that a person who had filed a whistleblowing complaint was in fact being discharged for reasonable grounds and not for having been a whistleblower?

Mr. FIDELL. Beyond saying in a substantial number of cases, I cannot put my finger on that. There is a substantial number of cases in which charges are found to be supported, many of which never go to hearing because the employer, when confronted by the Department of Labor or the investigative agency, says, "Gosh, I guess you've got us here," or words to that effect, some euphemism. There are cases that are clearly supported, and then there are cases that don't meet the standard.

Mr. GINGRICH. Has anyone done a study? Do you know if a study could be submitted for the record that indicates what percentage tends to fall in each direction?

Mr. FIDELL. You mean what the success rate is?

Mr. GINGRICH. Well, to what degree are the cases that are filed, filed by people that in fact were dismissed for good reason—and therefore they are not sustained—and to what degree are cases filed by people who in fact were discharged for being a whistleblower?

Mr. FIDELL. The closest thing I can point you to, sir, is the material that appears in the table at pages A-10 through A-14 of my study. That's the only study on this subject——

Mr. GINGRICH. And that study—which is a little tricky to decipher right off the top—did you summarize it numerically?

Mr. FIDELL. I haven't tabulated the specific information you're looking for, Mr. Congressman.

Mr. GINGRICH. And it represents the best study of approval and disapproval of whistleblowing complaints?

Mr. FIDELL. It's certainly the best study.

Mr. GINGRICH. I knew I was giving you this opportunity for a little advertising, here. [Laughter.]

Mr. FIDELL. But I know of no other study that has come up with a batting average——

Mr. GINGRICH. Could you submit a summary of what the conclusions are in terms of the people who have filed the complaints? How many are rejected because it turns out they were dismissed for good reason, and how many are approved or sustained or whatever because they truly were whistleblowers?

Mr. **Breger**. We'd be happy to do that.

I might add that page 11 of the study notes that with the second-largest number of cases, the Surface Transportation Act, they have about 248 complaints in fiscal year 1985, and they found that 58 had merit.

But we will put together what information we have on that.

Mr. **Gingrich**. Okay. That would be very helpful as we look at the bill.

[The following was received from Mr. Breger:]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
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WASHINGTON, D.C. 20037
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June 17, 1988

OFFICE OF
THE CHAIRMAN

The Honorable Norman Minetta
Chairman
Subcommittee on Aviation
House Committee on Public Works and Transportation
2251 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to Congressman Gingrich's question at the subcommittee's April 27, 1988 hearing examining bills to protect aviation industry employees who disclose safety information. Congressman Gingrich asked us to provide information reflecting the success rate of whistleblowers at hearings before administrative law judges at the Department of Labor. Because the Department's Office of Administrative Law Judges does not maintain data in a fashion designed to show wins and losses, we have collated such data as best we can from existing information.

Two tables are enclosed. We compiled Table A from data contained in our consultant's report, *Federal Protection of Private Sector Health and Safety Whistleblowers*, prepared by Eugene R. Fidell in 1987. Mr. Fidell compiled his information from records available at the Office of Administrative Law Judges. It covers whistleblower cases adjudicated under six substantive statutes between 1979 and 1986. The data break down into three categories. As you can see, approximately 61 percent of all complaints were dismissed for various reasons. About 10 percent proceeded to final decision, with a judgment for the employee resulting in reinstatement, back pay, or other miscellaneous relief. The remaining 29 percent of the cases ended in a settlement, accompanied by a dismissal of the complaint where, as we understand it, the employee obtained some form of partial relief.

Table B was provided to us by the Office of Administrative Law Judges. Although it reflects more recent information (it aggregates data from their case files for calendar years 1986 and 1987, plus 1988 to date), it basically distinguishes between cases that went to hearing and those that did not. As we understand it, cases listed as "for" or "against" are those which were decided in favor of, or against, the employee, after full hearing procedures. Those listed in Table B as "dismissed" include both those in which the employee was wholly unsuccessful and those in which a settlement was reached and the employee received some form of partial relief.

While I regret that data more tailored to Congressman Gingrich's question are not available, I hope this information is of some benefit in your deliberations. Please contact me if I can provide further assistance in your examination of this issue.

Sincerely,

Marshall J. Breger
Chairman

Enclosures

cc: Hon. Newt Gingrich

MJB/GJE

Table A
Page 1

Case Type (Year/#)	COMPLAINT DISMISSED	COMPLAINT SETTLED OR WITHDRAWN	JUDGMENT FOR EMPLOYEE
(*Surface Transportation Assistance* Act)			
STA-84	18	7	2
STA-85	13	8	2
STA-86	5	3	1
(*Energy Reorganization Act*)			
ERA-79	1	0	1
ERA-80	2	0	0
ERA-81	5	2	2
ERA-82	8	3	4
ERA-83	8	4	1
ERA-84	30	19	2
ERA-85	21	12	4
ERA-86	6	2	1
(*Clean Air Act*)			
CAA-84	1	1	0
CAA-85	2	1	0

Table A
Page 2

(*Safe Drinking Water* Act)			
SDWA-79	3	0	0
SDWA-80	2	0	0
SDWA-81	0	0	1
SDW-83	1	0	0
SDW-85	3	1	0
(*Toxic Substances Control* Act)			
TSCA-79	2	1	0
TSCA-81	1	0	0
TSCA-83	1	0	0
TSC-84	2	1	0
TSC-85	1	0	0
TSC-86	1	1	0
(Federal *Water Pollution Control* Act)			
WPCA-?	2	0	0
WPCA-80	0	0	1
WPCA-81	2	1	0
WPC-81	1	1	0
WPC-83	1	1	1
WPC-84	2	0	0
WPC-85	2	1	1
(Totals)	147	70	24
(Percentages)	61%	29%	10%

Table B

WHISTLEBLOWER ACTS	FISCAL YEAR 1986			FISCAL YEAR 1987			FISCAL YEAR 1988		
	For	Against	Dismissed	For	Against	Dismissed	For	Against	Dismissed
Energy Reorganization Act	3		7	3	1	13	2	3	10
Surface Transportation Act	3	1	11	4	2	17	1	3	7
Clean Air Act				1	1	3		1	
Solid Waste Disposal Act	1	1	1			3			
Safe Drinking Water Act				1		2			
Toxic Substances Control Act	1		1			1	1		
Federal Water Pollution Control Act	1			2		4			1

Mr. GINGRICH. Next, let me ask you, I understand Federal employees are currently covered by a general bill on whistleblowing. Is that correct?

Mr. FIDELL. They are covered by the Civil Service Reform Act.

Mr. GINGRICH. Okay. And does that provision also apply to Federal contractors? If FAA contracts out, do we need a separate provision that covers the contracting out?

Mr. FIDELL. Well, you would have to define what the protected class was. That's an issue in here—just thinking back to what the three Representatives testified to in their opening statements, there is a problem in defining what protected activity you all will have in mind. It would seem to me that protected activity should be a function of what the risk is to public health and safety. Whoever can contribute information that would affect the public health and safety, one would think, ought to be in the protected class.

Mr. BREGER. I might add that the Department of Defense Authorization Act presently extends protection to Defense contractor employees who have made disclosures to Members of Congress, DOD, or the Justice Department related to substantial violations of law in connection with a Defense contract. So I believe that's the present state of contracting protection.

Mr. GINGRICH. Let me ask one last thing. You talk about the need for a uniform bill. Is S. 2095 such a uniform bill? In other words, if we draft a bill specifically in the area of aviation, should we use that or something like that as a model around which to begin the process of uniformity?

Mr. BREGER. I believe so, yes. I think S. 2095 contains generally—as regards the procedures to be used, and I have to specifically say that that includes some matters that we don't necessarily go along with, such as the private right of action——

Mr. GINGRICH. So you're saying that it's not a model bill, that the bill has some aspects which are model but as a bill——

Mr. BREGER. As regards the procedures that are to be used in an adjudication, we think those are model procedures.

Mr. GINGRICH. Could you submit specifically which portions of the bill you think ought to be the model around which one could build the beginning of a pattern so that the committees also might then look at it as they revisit this issue?

Mr. BREGER. Yes, sir.

Mr. GINGRICH. Good.

I want to thank you very much. It's been very helpful testimony.

Mr. MINETA. Thank you very much.

Chairman Breger, Mr. Fidell, Mr. Lubbers, thank you very, very much for being here and helping us understand the situation a little more. We appreciate it.

[Mr. Breger's prepared statement and report submitted by Mr. Fidell follow:]

Testimony of

Marshall J. Breger

Chairman

Administrative Conference of the United States

before the

House Committee on Public Works and Transportation

Subcommittee on Aviation

on bills to protect aviation industry employees who disclose safety information

April 27, 1988

2120 L Street N.W.

Washington, D.C. 20037

Mr. Chairman and members of the subcommittee, I am Marshall J. Breger, Chairman of the Administrative Conference of the United States. I am happy to be with you today to present our views on three pieces of legislation, H.R. 3812, H.R. 4023, and H.R. 4113, designed to provide protection against reprisal for aviation industry employees who disclose information concerning the safe operation of aircraft -- or what has come to be known as protection for whistleblower activities. With me are Gary Edles, Legal Counsel at the Conference, Jeffrey Lubbers, our Research Director, and Eugene R. Fidell, a lawyer in private practice in Washington who served as a Conference consultant in our study of federal protection of private sector health and safety whistleblowers.

Before discussing the bills themselves, I think it is important to make two observations about how the Conference operates and the manner by which it arrives at its conclusions. First, we are charged by statute with examining the procedures by which agencies conduct their business. By and large, we have neither the statutory mandate nor the expertise to render opinions regarding the substantive aspects of agency activity. Second, the Conference takes formal positions only after extensive research, typically by a Conference consultant, thorough review by one of our committees, and approval by the Conference as a whole at one of our plenary sessions.

The Conference as a whole has not had the opportunity to examine any of the subject bills. But Mr. Fidell, at the Conference's behest, in 1987 undertook a study of the overall question of federal protection of private sector health and safety whistleblowers. His report led the Conference to adopt Recommendation 87-2: Federal Protection of Private Sector Health and Safety Whistleblowers, 1 CFR 305.87-2 (1988). I have appended a copy of that recommendation and Mr. Fidell's report to my testimony. My observations today reflect the Conference's 1987 recommendation.

A central element of Recommendation 87-2 was the Conference's judgment that, in the interest of uniform treatment of private sector health and safety whistleblowers, Congress should enact omnibus legislation for the handling and resolution of whistleblower complaints. In enacting such legislation, Congress should review the categories of workers to which it is appropriate to extend whistleblower protection. As explained in Mr. Fidell's report, the current statutory scheme includes over a dozen statutes with differing provisions for investigation, adjudication, definitions of protected conduct, remedies, statutes of limitations, and judicial review. This lack of uniformity -- most likely the result of incremental enactment of these statutes over a period of years -- threatens to undermine the credibility of this area of the law. The underlying purposes behind all whistleblower statutes -- that is, to ensure the health and safety of workers and the general public -- do not vary according to industry. The Conference believes that there is little purpose in applying different standards to workers in different industries. Put simply, why should a whistleblower complaining about unsafe conditions at a nuclear power plant have only 30 days in which to file a complaint with the investigative agency while someone complaining about mine safety conditions has 60 days? Absent some showing that would justify differences from one setting to another -- and Mr. Fidell was unable to find any -- a single time period should govern. For the same reason, centralization of whistleblower investigation and adjudication should be in a single place. Thus, the Conference believes that uniformity and centralization of whistleblower protection statutes is the preferred course of action. In short, a single, omnibus statute, unifying the provisions of existing law and incorporating any new areas which the Congress believes appropriate, is our preferred approach. Such legislation, S. 2095, was recently introduced in the Senate.

The bills before you, of course, are confined to the aviation industry. To that extent, at least, they deviate from what we believe to be a preferable course of action -- namely, the enactment of omnibus legislation. That is not to say, though, that Congress should delay protecting workers in the aviation industry pending the enactment of omnibus legislation. The Conference recognized that there are existing gaps in whistleblower protection, which include the aviation industry. We have no expertise in aviation safety matters, however, and must leave to Congress a determination of the urgency it attaches to the need for whistleblower protection in the aviation industry. What we would urge is simply that any discrete legislation of the type before you be drafted in a fashion that strives for uniformity in the substantive protections and procedures applicable to the aviation program and will not prejudice efforts to obtain omnibus legislation on the general subject of private sector whistleblowers.

Let me offer four specific observations on the subject bills. First, the Conference believes that any whistleblower legislation should include a uniform definition of protected conduct. The committee should be aware that there are two basic definitional approaches. All three bills would protect workers who provide information to the Government or participate in Government proceedings. But only H.R. 4023 would protect workers who refuse to perform any task because of the employee's reasonable apprehension that performance of the task will have an adverse effect on air safety and result in injury to himself or the public. The Senate bill follows the same approach as H.R. 4023 but the Conference has not adopted a position favoring one approach or another.

Second, the assignment of investigative and adjudicatory responsibility should be centralized in a single administrative agency. Because the Department of Labor now investigates and adjudicates complaints under a majority of existing statutes, centralization in that Department is a logical choice. As a consequence, we prefer the assignment of responsibility contained in H.R. 4113 or H.R. 4023 to the conferral of authority on the FAA Administrator, as proposed in H.R. 3812.

Third, a statute of limitations of not less than 180 days should govern the filing of complaints. Both H.R. 3812 and H.R. 4023 are consistent with the Conference's recommendation in this respect.

Fourth, the Secretary of Labor should have the authority to employ alternative means of resolving these disputes, with the consent of the parties. Each of the subject bills expressly authorizes settlement efforts and we endorse each of them in that respect.

Two final thoughts are in order. As I mentioned earlier, Mr. Fidell and the Conference staff worked closely with staff members in the Senate to help fashion the procedural portions of the omnibus whistleblower legislation introduced there. If you believe we can be of help, we would be pleased to offer assistance to this committee as well. Furthermore, Congress should re-examine the results of its efforts at some time in the future. Should the committee so direct, we would be pleased to assist in that review.

I appreciate the opportunity to appear today.

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OFFICE OF
THE CHAIRMAN

1 CFR § 305.87-2

Recommendation 87-2

Federal Protection of Private Sector Health and Safety Whistleblowers

Adopted June 11, 1987

Private sector employees who make disclosures concerning health and safety matters pertaining to the workplace are protected against retaliatory actions by over a dozen federal laws. By common usage these employees, as well as others who make similar disclosures concerning fraud or other misconduct (but who are beyond the Conference's current study),[1] have become known as whistleblowers. Under current statutes, for example, nuclear power plant workers, miners, truckers, and farm laborers are specifically protected when acting as whistleblowers. Other workers may be covered under the more general protections granted by the Occupational Safety and Health Act (OSHA) or various environmental laws.

The protection provided employees by the so-called whistleblower statutes under study serves the important public interest of helping ensure the health and safety of workers in the various regulated industries or activities, as well as that of the general public. The statutes are intended to create an environment in which an individual can bring a hazardous or unlawful situation to the attention of the public or the government without fear of personal reprisal. Such disclosures can be a valuable source of information especially where the public lacks the knowledge or access to information necessary to be fully informed on these important issues.

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[1] The Conference has limited its study to health and safety related disclosures because in this area a pattern of federal statutory protections has emerged with sufficient experience to allow a study.

In its examination of the current federal statutory scheme designed to protect whistleblowers in the private sector, the Conference found that, as currently written, the various whistleblower statutes lack uniformity in a number of areas including the following:

1. Investigative responsibility is assigned to numerous agencies, including the Department of the Interior and several within the Department of Labor (DOL), with little coordination among them.

2. Adjudicatory responsibility is similarly divided. For example, while several statutes provide for adjudication by a DOL administrative law judge, others provide for decisions by different agencies or for trial in the district court.

3. Judicial review likewise differs. Some statutes provide for review in the district court, some in the court of appeals. And for some, no review is available.

4. Statutes of limitations for filing a complaint range from 30 days to 180 days.

5. Definitions of protected conduct differ according to statute. For example, protected disclosure may include any disclosure or may be more narrowly defined as disclosure to "the public," to the media, to the responsible agency, or to a union or employer. Protected conduct may or may not include refusals to work.

6. In certain cases where the designated agency declines to proceed with the complaint (under either the OSHA or the Asbestos Hazard Emergency Response Act), the complaining employee is left without any further administrative or judicial review.

As a result of these statutory incongruities, available procedures and protections may differ depending solely upon the industry to which an aggrieved employee belongs. For example, an employee seeking protection under the Clean Air Act (CAA) has 30 days in which to file a complaint, while an employee filing under provisions of the Migrant Seasonal and Agricultural Worker Protection Act (MSAWPA) has 180 days. And while both CAA and MSAWPA violations are investigated by the Wage and Hour Division of the Department of

Labor, adjudication of CAA complaints is before a DOL administrative law judge, while MSAWPA complaints are adjudicated in the district courts. The Conference has concluded that this lack of uniformity does not appear to be reasoned, but most likely reflects the incremental enactment of the various statutes over a period of years.

Accordingly, the Conference believes that omnibus whistleblower legislation providing for centralization of the investigative and adjudicative functions is needed. Because the Department of Labor now investigates and adjudicates such complaints under the majority of existing statutes, centralization in that Department is the logical choice. Although specialized expertise possessed by agencies responsible for the various regulatory programs covered by whistleblower provisions may be required in exceptional circumstances to resolve these disputes, the Conference believes that centralization is preferrable and that enforcement and adjudicative responsibilities should where feasible be assigned to the DOL.

The Conference study also discussed areas of regulation where gaps in whistleblower protection exist. These include the aviation and aeronautics industries, vessel construction and operation, and manufacturing and production of food, drugs, medical devices or consumer products generally. Where Congress has judged it necessary to regulate an industry so as to ensure the safety of its workplace, products, services or the environment, Congress should consider whether it is appropriate that enforcement of the regulatory scheme be strengthened by providing whistleblower protection for the industry's employees who report statutory violations.

The study also indicated that access to written decisional precedents in these cases needs to be improved. The Department of Labor's Office of Administrative Law Judges does not yet publish its decisions (although it has recently announced plans to do so), and a unified index for these decisions and those of other agency adjudicative bodies does not exist. Publication and indexing of existing case law should help narrow the issues for future adjudications, contribute to a sense of fairness in the adjudicatory process, and improve case management. In addition, the study found that, with certain exceptions, there is little interaction between the program agency and the investigating/adjudicating agency, thus diminishing the involvement of the lead program agencies. Procedures should be established by which program agencies provide assistance to investigative agencies, and adjudicatory agencies report decisions back to the program agency.

Finally, the Conference notes that there is a growing amount of litigation in state courts concerning whistleblowers, but does not take a position on whether federal statutes do or should preempt state law in this field. (ACUS Recommendation 84-5, Preemption of State Regulation by Federal Agencies, recommends that Congress address foreseeable preemption issues, and advises regulatory agencies to be aware of situations where a conflict might arise.)

With the increasing interest in these matters by Congress, the media and the general public, the Conference hopes that its study will provide a foundation for needed improvements.

RECOMMENDATION

I. In the interest of uniform treatment of private sector health and safety whistleblowers, Congress should enact omnibus legislation for the handling and resolution of whistleblowers' complaints. In enacting this legislation, Congress should review the categories of workers to which it is appropriate to extend whistleblower protection. As a general matter, the administration of this program should be centralized in the Department of Labor in furtherance of efficiency and harmony of results. If, however, Congress deems it necessary for a program agency to retain or receive investigative or adjudicative responsibility for whistleblower complaints, Congress should strive for uniformity in the substantive protections and procedures applicable to the separate program.[2] The omnibus and any other whistleblower legislation should include:

(A) a uniform definition of protected conduct;

(B) a uniform statute of limitations of not less than 180 days governing the filing of complaints;

(C) a uniform provision for remedies;

(D) assignment of preliminary investigative responsibility to the Secretary of Labor[3] for all private sector health and safety whistleblowing retaliation cases;

(E) authorization for the Secretary of Labor to employ alternative means of resolving these disputes, with the consent of the parties (see ACUS Recommendation 86-3, Agencies' Use of Alternative Means of Dispute Resolution);

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[2] The Conference does not intend to suggest that whistleblower protection provisions now administered by the Department of Labor be reassigned. Nor is this recommendation intended to affect the existing jurisdiction of the National Labor Relations Board to investigate and adjudicate allegations of unfair labor practices.

[3] All references to the Secretary of Labor in recommendations I(D)-I(H) encompass other appropriate agency heads in instances where Congress deems it necessary for a program agency to retain responsibility.

(F) provision for an opportunity by any affected person to request an on-the-record APA hearing before a Department of Labor administrative law judge and for discretionary review by the Secretary of Labor, judicial review in the courts of appeals, and enforcement in the district courts;

(G) a grant of subpoena power to the Secretary of Labor for whistleblowing investigations and hearings, with provision for judicial enforcement; and

(H) a grant of rulemaking authority to the Secretary of Labor with respect to investigative and adjudicatory procedures, notice-posting requirements and mandatory coordination with other agencies.

II. Whether or not Congress enacts omnibus whistleblowing legislation, the Secretary of Labor should:

(A) promulgate rules of appellate procedure governing practice and procedure in connection with the Secretary's review of administrative law judge decisions in whistleblower cases;

(B) transfer primary private sector health and safety whistleblowing investigative responsibility to a single entity within the Department of Labor, absent compelling reasons to the contrary;

(C) develop, in consultation with the agencies responsible for the substantive regulatory programs, detailed written procedures for coordinating investigation, adjudication and follow-up in whistleblowing cases; and

(D) in accordance with the Freedom of Information Act, 5 U.S.C. §552(a)(2)(A), index and publish all ALJ and Secretarial decisions in whistleblowing cases, including those rendered prior to the date of this recommendation.

FEDERAL PROTECTION OF PRIVATE SECTOR HEALTH AND SAFETY WHISTLEBLOWERS

A Report to the
Administrative Conference of the United States

by

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This Report was prepared for the Committee on Adjudication, Administrative Conference of the United States. Opinions expressed in this Report are those of the author alone, and should not be construed as representing the views of the Administrative Conference or any other agency of the Government.

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Introduction and Summary1/

Few areas of federal labor law are currently the subject of as wide public interest as "whistleblowing", a now familiar term for the dissemination by an employee of information critical of or reflecting adversely on an employer, typically for the purpose of correcting or preventing some violation of law or other harm to the public interest.2/ The most widely publicized recent episode--involving two engineers employed by Morton Thiokol Inc., a major National Aeronautics and Space Administration contractor for the ill-fated Challenger space shuttle--is only one in a growing series of incidents in which employees have alleged that they were retaliated against for whistleblowing in matters affecting health or safety.

Over a dozen federal laws attempt to protect whistleblowers from retaliation in wide areas of private sector activity where health and safety are at stake.3/ These laws, which protect both public and workplace health and safety interests, omit large and potentially important industries such as aviation and pharmaceuticals. In addition, they have created a crazy quilt of investigative, adjudicatory and review responsibilities. These are summarized in Table 1 below. There appears to be increasing Congressional interest in protecting yet other categories of whistleblowing.4/

While a body of literature has developed concerning whistleblowing (and the promise of more to come), it is only now being recognized that these statutes form part of a larger whole. Until now, with a few notable exceptions,5/ little effort has been made to render a rational account of Congress' activity in this area and those who have become involved under one or another of the statutes have tended not to become involved in the others. Federal whistleblowing protection has probably been seen more as an appendage to the underlying substantive regulatory program, than as a focus for legal analysis in its own right or as a new subspecialty within the field of labor law. One of the purposes of this report is to suggest a different perspective: viz., that the varieties of legislative and administrative experience under the federal health and safety whistleblower protection provisions, taken as a whole, represent a "sea change" in labor law that merits study and legislative attention in its own right.

As Table 1 shows, under eight of the federal whistleblowing statutes, the Secretary of Labor has assigned investigative responsibility to the Wage and Hour Division, under two others to the Occupational Safety and Health Administration, and under one to the Mine Safety and Health Administration. Other agencies have important investigative or adjudicatory responsibilities as well. These include the Department of the Interior, which has both investigative and adjudicatory tasks, the Department of Defense (as to DoD contractors), and the independent

Mine Safety and Health Review Commission, whose job is only adjudicatory. With the exception of the relationship between the Wage and Hour Division and the Nuclear Regulatory Commission, there appears to be little active coordination among the agencies concerned.

Some of the statutes create elaborate hearing procedures; others are silent. They differ widely on matters as critical as the definition of protected conduct, the statute of limitations, remedies, and the machinery for adjudication and judicial review. Anomalies abound. For example, statutes of limitations range from 30 days to 6 months. Where whistleblowing in respect of violations of OSHA's own regulations are concerned, OSHA investigates, and adjudication is in the district courts. Where violations of the Surface Transportation Assistance Act of 1982 are in issue, on the other hand, OSHA investigates, but adjudication is by Department of Labor administrative law judges. The Mine Safety and Health Review Commission, an independent agency, decides whistleblowing cases; the Occupational Safety and Health Review Commission -- another independent agency -- does not. Some of the statutes cover safety-based refusals-to-work along with the kinds of disclosure most people think of as whistleblowing; some contemplate the award of punitive damages; some authorize temporary reinstatement while the merits of the case are being adjudicated.6/ Employees who lose at the agency level under most of the statutes may obtain judicial review; not so, however, in the case of violations of section 11(c) of the Occupational Safety and Health Act or section 211 of the Asbestos Hazard Emergency Response Act because the employees are completely dependent upon the willingness of the Labor Department to prosecute their causes on their behalf.

Because many of these discrepancies reflect vagaries of the legislative process as it has addressed various industries on an incremental or piecemeal basis over the years, a number of them are difficult to justify according to any neutral principle of public administration. On some issues, conscious substantive legislative choice and the political process are reflected in the current institutional arrangements for the protection of private sector health and safety whistleblowers. For this reason, as noted in the concluding section of this report, some of the matters that one might see every reason to alter may lie beyond the ordinary role of the Administrative Conference. On the other hand, the institutional hodge-podge described in this report transcends mere untidiness or asymmetry. At a certain point, divergent approaches can overwhelm the law by eroding public confidence in the fundamental coherence of the governmental process. That point has unquestionably been reached in Congress' efforts to protect those who suffer employee retaliation for calling attention to health and safety violations.

This report suggests that the Conference recommend (1) the enactment of omnibus whistleblower legislation uniformly applicable to all activities subject to health and safety regulation by the federal government in order to encourage private actions in support of those federal programs and to ensure fairness, uniformity and rationality in the adjudicatory and remedial processes, and (2) specific actions (identified below) to be taken by the Secretary of Labor to improve the administration of the current diversity of private sector whistleblower protection programs.7/

Taxonomy and Terminology

Although much of the business of ensuring that the laws are observed have become the responsibility of government rather than private citizens, the Supreme Court has rejected the notion that private citizens have no role to play.8/ By way of preface, it may be appropriate to try to orient the whistleblower protection provisions within the range of tools available to government for the achievement of public objectives. Some of these tools are negative, and some are positive. Some are direct (*i.e.*, used by the government itself) and some are indirect (relying rather on private individuals). For example, imprisonment, fines, penalties and forfeitures are familiar sanctions government uses to achieve its ends. These are direct and negative (or disincentives).9/ Rewards10/ or *qui tam* provisions might be thought of as indirect positive incentives in

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that they rely on or seek to encourage private interests to help achieve public ends. In some circumstances, the law may create an indirect negative incentive to encourage private citizens to assist in suppressing crime, as in the case of the Tariff Act provision making it a misdemeanor to refuse to assist a Customs officer.11/ The whistleblowing anti-retaliation provisions of federal law are best thought of as the removal of a disincentive for private assistance in achieving public ends, since the purpose of such provisions is to hold harmless those employees whose information must reach the government in order to help achieve public goals.12/

In addition to this taxonomic note, mention might be made of certain terminological pitfalls in the whistleblowing area. Thus, the phrase "employee protection" is occasionally used to describe whistleblowing anti-retaliation measures.13/ This term, however, is also used in other contexts that have nothing to do with whistleblowing, such as the arrangements under section 507(e) of the Federal Water Pollution Control Act for investigations into employees' complaints that an employer has discharged or discriminated against them because of effluent limitations or orders issued by EPA under that statute,14/ or the seniority-protective provisions of the Airline Deregulation Act of 1978.15/ One recent enactment uses the term "Public Protection," which is so vague as to be essentially meaningless.16/

The terms "discrimination" and "affirmative action" are used in describing protected whistleblowing and the fashioning of remedies, respectively. These obviously have special meanings in our society, and their use in this context can be a hindrance to understanding because it inappropriately implies a legal or doctrinal kinship with the race relations area, thereby bringing into play a very different set of concerns and values from those that underlie public policy in the whistleblowing area.

The Common Law Context

The background against which the federal legislation addressed in this study arose may be briefly sketched.17/ At common law (American, incidentally, rather than English), the rule evolved that an employee who did not have a contract that provided otherwise could be dismissed at the will of the employer. This doctrine is said to have its origins in a treatise published a little more than a century ago,18/ and promptly took root in the cases, which seem to have adopted this notion quite uncritically.19/ Eventually, however, some courts began to carve exceptions from the rule, and doctrines have arisen in a number of jurisdictions holding that there was a "public policy exception" to the "employment-at-will" rule. In summary, such exceptions hold that an employer will not be permitted to discharge an employee for conduct that advances a recognized public policy. The law on this point is essentially state law,20/ and the extent to which the doctrine applies to any particular set of facts is likely to vary dramatically from one jurisdiction to the next.

The Federal Legislative Response

In addition to judicial recognition of a "public policy exception" to the at-will doctrine, Congress and a number of state legislatures have enacted specific provisions ensuring protection against retaliation for employees who assert various rights. The federal legislation includes a variety of statutes, only some of which deal with public health and safety programs.21/ This report is confined to the measures protecting health and safety whistleblowers; a broader study may also be desirable at a later date to explore the need for rationalizing the total federal legislative scheme.

1. Public Sector Employees. Table 2 lists the various federal statutes that seek to protect from retaliation those public employees who engage in whistleblowing.22/ These statutes are beyond the scope of this study, but a few words may still be in order. The key statute is the Civil Service Reform Act of 1978, which created broad protection for disclosures by civilian federal employees. Disclosures relating specifically to health and safety form only a small part of the field of protected

conduct, and it is believed that few of the whistleblowing cases that have arisen under the CSRA have involved health or safety considerations. Most CSRA cases have to do with allegations of waste, fraud and abuse.

The most recent addition to the list of public sector antiretaliation laws is the Department of Defense Authorization Act, 1987, which extends protection to defense contractor employees for disclosures to Members of Congress, DoD and the Justice Department "relating to a substantial violation of law related to a defense contract."23/ This measure is a modification of an earlier proposal that would have extended expressly to disclosures relating to "substantial and specific danger to public health and safety." In addition, the earlier version protected military personnel as well as contractor employees from reprisals.

2. Private Sector Employees. The range of federal statutes protecting private sector employees who "blow the whistle" on health and safety problems is considerable. These are set forth in Table 1. Together, they cover a large part of the American work force, and fall into several broad categories. Some are industry-based, such as those affecting mining, the nuclear industry or particular transportation modalities. Some address sweeping environmental concerns, such as those for which EPA is the program agency. And some cut across the broad spectrum of

industrial activity in the country, such as OSHA, NLRA or LMRA.24/ The same conduct may violate more than one statute, thus involving multiple decisional tracks.25/

The effectiveness of these arrangements is open to question. As two perceptive students of the field recently wrote, "[t]he record is particularly grim in industry; not one of the industrial whistleblowers we studied survived on the job."26/ "With few exceptions, they are driven out of not just their jobs, but their professions, too."27/

3. "Twilight Zone" Cases. In a number of instances, it may be difficult to characterize the class protected by a whistleblower statute as "public" or "private." For example, the 1984 Defense Department authorization extended whistleblower protection, including health and safety disclosures, to employees of nonappropriated fund activities. Section 211(a) of the Asbestos Hazard Emergency Response Act of 1986 protects all persons from discrimination, but specifically includes employees of state and local educational agencies. State employees have found protection under the Safe Drinking Water Act,28/ and at least one case involving a federal employee—that of EPA employee Hugh Kaufman—has been filed with the Department of Labor under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Government contractor employees have been held to be protected under several of the whistleblower statutes.29/

4. Caseload. Basic caseload figures for private sector health and safety whistleblowing cases in Fiscal Year 1985 appear in Table 7. The data show that by far the largest single category of complaints is under section 11(c) of the OSH Act. These cases, however, do not involve agency hearings; if OSHA finds the case meritorious, it brings a civil action on behalf of the complaining employee. The only intra-agency remedy a complainant has is to seek review within OSHA of an initial decision not to pursue the case.30/ As the table shows, very few section 11(c) cases are pursued by the Department.31/

The section 11(c) complaint caseload appears to have been fairly stable over the last several years.32/ For example, in FY78, OSHA received 3,000 employee complaints.33/ The corresponding numbers for FY83 and FY84 were 2522 and 2813, respectively.34/

The next-largest group of cases involves the Surface Transportation Assistance Act, under which OSHA received 354 complaints during FY84.35/ The number of complaints declined to 248 in FY85.36/ "[I]n the first half of 1984, only eight cases were found to have merit. By the end of the year, twenty-five merit findings had been issued, and in 1985 fifty-eight merit findings were issued."37/ In FY85, the OALJ docketed 20 STAA cases following OSHA investigation, and conducted 6 APA hearings.

Third in frequency are retaliation complaints under the Federal Mine and Safety Health Act. MSHA investigated 276 complaints of safety- or health-related discrimination that were filed during FY85.38/

The Department of Labor has created an Office of Administrative Law Judges to adjudicate cases under a broad range of statutory programs, most of which have nothing to do with whistleblowing. That office is, however, also responsible for a substantial part of the overall whistleblower caseload. Taken together, the OALJ received 77 such cases during FY85 under the various whistleblowing statutes it administers (including the 20 STAA cases referred to above). Of these, the vast majority were nuclear cases brought under the Energy Reorganization Act. Overall, the OALJ has received 264 whistleblowing cases since 1980.39/ The number of whistleblower complaints received by the Department of Labor is not available at this writing, but it appears that in FY85, the Wage and Hour Division conducted approximately 50 investigations under the statutes for which it is responsible, of which about half were found to be meritorious.

Statistics concerning the incidence of whistleblowing cases brought before the NLRB are also unavailable, although case summaries furnished by the Board's Office of General Counsel indicate that health and safety issues are not uncommon in Labor Board proceedings.40/

There have been very few discrimination complaints under the Surface Mining Control and Reclamation Act.

For comparative purposes, during FY85, the Office of Special Counsel of the Merit Systems Protection Board received 135 whistleblowing disclosures from federal employees.41/

Shortcomings of the Current Arrangements

1. Jurisdictional Lacunae - The most obvious shortcoming of the current federal legislation protecting health and safety whistleblowers is the omission of major sectors of the economy where health and safety are unquestionably at stake. For example, Congress has yet to extend whistleblowing protection to: aviation, aerospace, vessel construction and operation, food and drugs, medical devices, and consumer products generally. While the major environmental laws administered by EPA include whistleblower provisions, one -- the Noise Control Act of 1972 -- does not. Even where the industry itself is covered, the statute may be written to exclude persons whose jobs have safety implications.42/

A major omission has long been the vast number of government contractors to the extent that their activities were not covered by any of the subject-matter-specific antiretaliation statutes. For example, in 1974, the Department of Labor and the Atomic Energy Commission acknowledged that ". . . Section 4(b) (1) (of the OSH Act) renders OSHA inapplicable to the working conditions of AEC contractor employees working in Government-owned or -leased, contractor/operated facilities as long as AEC continues to prescribe and enforce radiological and non-radiological occupational safety and health standards." This kind of gap has been addressed in a variety of ways, including internal agency regulations or contractual provisions.43/

Congress has also begun to recognize the need for coverage of government contractors in general. For example, in the aftermath of the Challenger disaster, Representative Markey observed:

> If the Morton Thiokol engineers were Federal employees, they would have recourse through the Civil Service Reform Act and the Office of Special Counsel. But as employees of a Government contractor, they have no protection.44/

How whistleblowers such as the Morton Thiokol engineers ought to be protected may well raise difficult drafting problems, since it appears that their expressions of concern were not couched in terms of violations of federal regulations, but rather involved a degradation of safety standards peculiar to the shuttle effort. Whether safety concerns voiced within a company ought to be protected is a matter of considerable controversy, and Congress would do well, in framing generic whistleblower protective legislation, to consider carefully how such legislation would have affected the Challenger case.

Congress has not yet passed general whistleblower protection for employees of government contractors, although it has done so for Department of Defense contractors in the

Department of Defense Authorization Act, 1987.45/ Prior to passage of that legislation, a Defense Department contractor employee alleging retaliatory discharge could try to sue under the False Claims Act,46/ although the gravamen of such a case is fraud on the government rather than harm to the employee. Generic protection for contractor employees was introduced in the 99th Congress47/ and will be reintroduced in some form in the 100th.

Of course, not all health and safety programs involve concerns of the same gravity and magnitude. To take an obvious example, the potential health and safety implications of many violations of NRC regulations could be of a different order of magnitude from an isolated violation of trucking safety regulations. Comparing safety programs requires a consideration not only of the magnitude of the hazard, but also the probability of its occurrence. Perhaps a standard could be developed under which one could argue that different measures of employee protection are appropriate in different industrial or other contexts. On the other hand, one would think that anything that was sufficiently charged with a public interest to warrant federal regulation in the first place should also warrant protection for whistleblowers simply as an aid to enforcement and ensuring voluntary employer compliance with the underlying safety and health requirements.

One thoughtful reviewer of the draft of this study cautioned that expansion of whistleblower protections to persons in highly sensitive positions might make it too difficult to remove an incompetent or malicious employee. Where the superior can anticipate that his own integrity may be put in issue in the adjudicatory process, there may be a chilling effect on his or her willingness to take needed disciplinary action. The net result would be contrary to the public interest of health and safety.48/ This factor is difficult to assess in empirical terms, but there does seem to be a satisfactory response to it: the adjudicatory process must be reasonably prompt and reliable, and so managed as to offer no reason for malcontents or marginal performers to see it as an insurance policy against proper discipline. Agency decisionmakers should be alert to the detrimental effect on health and safety if managers and supervisors form the opinion that turning a blind eye to poor work is preferable to the inconvenience of an investigation and possible hearing. If supervisors are not to be deterred from performing their jobs, the process should be as free of wasted time and effort as possible. Nonetheless, as in any disputatious setting, there will always be some who are so put off at the prospect of a government investigation that they may "put up" with a poor performer longer than they should. There is, in this, however, nothing peculiar to this setting; how long would an unsafe employee be retained even though firing him or her would trigger some other kind of discrimination claim?

2. Protected Conduct. The health and safety whistleblowing statutes basically protect two kinds of conduct: (a) disclosures and, in a few instances, (b) refusals to work. In neither category has Congress acted uniformly.

(a) Protected Disclosures. Table 4 summarizes the statutory provisions that define protected disclosures. As a brief review of that listing will show, Congress has used a wide range of terms to describe the disclosures it wants to protect. It is however, difficult to understand why a uniform set of concepts could not be substituted.

To identify a few of the variations, there are provisions that apply to any disclosure (AHERA) disclosures to the media (OSHA),49/ disclosures to the agency or agencies responsible for administering the underlying regulatory program (*e.g.*, ERA), and disclosures to a union (FMSHA, OSHA) or employer (FMSHA, OSHA, SHCRA). The circuits are split on whether the ERA protects "internal" complaints to an employer.50/ The underlying validity of employee safety concerns under the ERA and environmental statutes has been held to be beyond the Labor Department's jurisdiction; the disclosure need only be made in good faith.51/

Retaliation against concerted activity in response to safety concerns has been held to be an unfair labor practice by the NLRB, but the Board has recently emphasized that it "was not intended to be a forum in which to rectify all the injustices of the workplace."52/ Given the requirement for concerted activity, and the Board's emphasis on the fact that the employee in Meyers (a truckdriver who was retaliated against for refusing to work and reporting a safety violation to state authorities) might have an action under state law or (had it been in effect at the time) under the STAA, it seems improbable that the NLRA will prove to be of substantial benefit to whistleblowers who act alone -- particularly if their conduct might also be protected under other legislation.53/ Indeed, the current Board has expressly disclaimed an interest in "taking it upon ourselves to assist in the enforcement of other statutes."54/ This narrow perspective would seem to be at odds with the philosophy underlying the whistleblower provisions, the basic purpose of which is to assist in the achievement of substantive federal health and safety objectives. Because the statute of limitations for unfair labor practice complaints is longer than most of the whistleblowing statutes, contraction of the NLRB's role effectively reduces the protection available to employees. Meyers suggests that Congress should not look to the broad coverage of the NLRA as a reason to refrain from enacting generic private sector whistleblower legislation. The case has been appealed again to the District of Columbia Circuit.55/

(b) Refusals to Work. Employee refusals to work are protected under the Energy Reorganization Act, Federal Mine Safety and Health Act, Federal Railroad Safety Authorization Act, Labor

Management Relations Act, National Labor Relations Act and Surface Transportation Assistance Act.56/ The NLRA protects only "concerted activity" under section 7, rather than individual conduct.57/ Unless the refusal to work is part of a group effort or is an individual effort intended to enlist the support of others, or involves the assertion of a right grounded in a collective bargaining agreement,58/ it will not be protected, according to the NLRB's latest pronouncement on the issue.59/ Section 502 of the LMRA applies to employees who stop work "in good faith because of abnormally dangerous conditions,"60/ but it is unclear whether the provision protects only those workers actually at risk, or others who join with them.

In addition to the statutory provisions, safety-based refusals to work are protected by a regulation issued under the Occupational Safety and Health Act,61/ and upheld by the Supreme Court in Whirlpool Corp. v. Marshall.62/

The refusal to work provisions typically require that the employee have an actual reasonable belief that he is in danger.63/ For example, the STAA provides:

> No person shall discharge, discipline, or in any manner discriminate against an employee . . . for refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards, or orders applicable to commercial vehicle safety and health, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the

> circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury, or serious impairment of health, resulting from the unsafe condition. . . . 49 U.S.C. sec. 2305(b) (Supp. III 1985).

3. Limitation of Actions. As shown in Table 1, the range of statutes of limitation applicable to health and safety whistleblowing complaints is considerable and, given the plain kinship among these statutes, intellectually indefensible. Absent some showing that would justify differences from one setting to another--and the author has been unable to discern the basis for such a showing--a single statute should govern.

What should the limitation period be? This is necessarily a matter of legislative judgment, and should reflect the fact that employers are unlikely to tell an employee that he or she is being dismissed as a reprisal for whistleblowing. as a result of this factor, the employee may not be aware at the time of discharge that a statutory right has ben contravened.

If an employee must file more than a "notice of appeal" to trigger the whistleblowing hearing processes,64/ a 30-day statute is unreasonable, even if a notice is required to be posted advertising the complaint process. Moreover, an employee may well find it impossible to find counsel who can prepare a complaint in such a short period, particularly since much whistleblower litigation is conducted on a contingent fee basis in the hope of securing an award of attorneys fees. As shown in Table 8, a significant number of the whistleblowing cases brought to the

DOL Office of Administrative Law Judges are dismissed for untimeliness. Other cases are dismissed for untimeliness by the investigative agencies. On balance, and considering the potential complexity of these cases, a single statute of limitations of not less than 180 days seems appropriate.

4. Investigative Arrangements. Table 1 identifies which agency is responsible for the investigation of whistleblower complaints under the private sector statutes. The Wage and Hour Division has been given responsibility for seven of the statutes under which hearings are conducted by the DOL Office of Administrative Law Judges, as well as for two statutes (FLSA and MSAWPA) under which adjudication is performed by the district courts.65/ OSHA is responsible for STAA cases that are eventually heard by the OALJ, as well as violations of OSHA's own regulations, which are heard in the district courts.

The basic issue that emerges from the assignment of investigative functions is whether those functions should be performed by the agency with responsibility for the underlying substantive safety program. On the one hand, if the subject matter is complex or technical, it could be argued that only the program agency would have the technical expertise necessary to evaluate whistleblower cases. On the other hand, there may be concern that the program agency might be less than impartial in whistleblower cases to the extent that a whistleblower's charges may be thought to imply that the program agency was ineffective.66/ Some program agencies are considered to be too sympathetic to the regulated industry, and lack of resources may lead to "dispirited" enforcement of safety regulations.67/ Congress recognized the possibility that an agency might have a conflict of interest, for example, when it broke up the former Atomic Energy Commission (which had both regulatory and promotional responsibilities) into the NRC and the former Energy Research and Development Administration.68/

The case for having adjudication handled by the program agency based on the theory that substantive expertise in the underlying technical field is required is unpersuasive. For one thing, the program agency would always be available to supply expert witnesses on any truly technical issues, a technique that would presumably be used today in those cases that arise under statutes where adjudication is handled by the district courts, which can claim no special expertise. More to the point, the whstleblowing statutes do not require a determination that the complainant's safety concern is technologically "correct," but rather that it is merely reasonable inthe circumstances. To be sure, even that question imposes on the decisionmaker an obligation to assess the merits of the worker's health or safety concern, but the burden on the decisionmaker would seem to be much less onerous than might be the case if the complainant were protected from reprisal only if his or her safety objection was not only reasonable but "correct."

Congress has not yet taken a clear position on the generic issue of agency conflicts, although under seven of the whistleblower statutes (DoD87, FMSHA, FRSAA, MSAWPA, NLRA, OSHA, SMCRA) the program agency is also the whistleblowing investigative agency.69/ While the statutes under which these roles are combined involve technical areas such as the environmental and nuclear contexts, certainly there are also technical aspects to cases arising under the two mining statutes, under each of which the program agency also investigates. To the extent that a statutorily independent Inspector General is assigned investigative responsibility under DoD87, the danger of institutional conflicts of interest would appear to be minimal under that particular statute.

One useful approach might be to recognize that the investigation of whistleblowing is itself a specialty, and that the public interest would be served by having a single agency responsible for all whistleblowing investigations. Which agency that should be is not crucial, but presumably it should be one that is currently responsible for a substantial share of the government's total incoming caseload of whistleblower complaints. The available data,70/ tend to point toward OSHA, although the Wage and Hour Division has also amassed valuable experience under the varied statutes for which it has responsibility. The choice is probably best left to the Secretary of Labor. In any event, there is no need to add a brand new agency or additional staff for this purpose; the non-OSHA caseload data suggest that inter-agency transfers would suffice to meet any shift in agency responsibilities. If, on the other hand, substantial new categories of employees are brought under whistleblower provisions, some net increase in staff would be needed, unless there is slack available at present.

The program agencies should play an active role in support of the investigative agencies, even if they do not themselves have investigative responsibility. In technical cases, the program agencies can (and already do, on occasion) furnish technical advice to the investigative agencies. They can also be asked to provide expert witnesses or technical interrogators for hearings. At times, they might wish to appear as _amici_ in the whistleblower hearings.71/ And, to be sure, they should in each case receive reports on the outcome of hearings so that they may take whatever followup actions may be appropriate in light of the facts developed in the adjudicatory process. These reports should include the adjudicatory decisions as well as the investigative agency's comments and analysis, where appropriate.

The program agencies should take affirmative steps in aid of whistleblower protection, such as the issuance of employee protection regulations that could be enforced in the licensing context, where appropriate, as the NRC has done.72/ They can also impose useful notice-posting requirements by regulation so that employees will know in advance of their rights under the employee protection statutes.73/ This is particularly appropriate if Congress continues to insist on unrealistically short statutes of limitation.

Concern has been expressed over the short time typically allowed to the investigative agencies for processing employee complaints. Rather than simply eliminating the investigative phase (e.g., permitting the employee to institute an APA hearing without prior agency screening),74/ attention might be given to providing that if the investigative agency has not completed its investigation within a fixed period, the employee at that time could obtain an APA hearing on request.75/ The disadvantage of such an arrangement would be that the employee would be deprived of the potentially useful initial reaction of the agency: at present, a favorable initial ruling may be critical to the employee's ability to obtain counsel on a contingent fee basis.76/

Another issue concerns the desirability of requiring or encouraging an employee to exhaust remedies provided by the employer as a precondition to an agency hearing.77/ Table 5 identifies those employee protection programs that require or suggest such exhaustion. Many firms today have internal mechanisms for the receipt of employee safety complaints; a few have contracted with outside companies to provide an external private dispute-ventilation machinery.78/ Before a broad requirement for such programs is imposed, however, serious thought should be given to the fact that an exhaustion requirement may only retard employee access to the public adjudicatory process, and arguably provide the employer with an unfair opportunity forearly discovery possibly before the employee has legal representation. If attention is given to requiring such programs, the concerned agencies will have to address the discoverability of documents generated during the process (a matter that has already arisen in at least one case arising under the ERA)79/ and the need to toll the statute of limitations during exhaustion. One attorney representing employers has indicated that documents and statements generated by both sides in the course of exhaustive internal channels would be discoverable.80/ The author's view, on the basis of the information currently available, is that the public interest in prompt disposition of employee protection complaints outweighs the competing interest in potentially reducing the need for recourse to formal governmental processes. Certainly public policy "should not aim at driving every internal dispute toward litigation,"81/ but the system should also not create excessive hurdles.

5. Adjudicatory Procedures. Nowhere is the lack of consistency in federal protection of whistleblowers more apparent than in the arrangements Congress has directed for adjudication of complaints. As shown in Table 1, in 8 instances (involving cases arising under the environmental laws and the STAA), on-the-record APA hearings and recommended decisions are the task of the DOL Office of Administrative Law Judges,82/ subject to final action by the Secretary of Labor,83/ with the assistance of the DOL Office of Administrative Appeals. One source of concern has been the

lack of detailed regulatory guidance as to the procedures to be followed in connection with review by the Secretary.84/ The Department of Labor has shown its concern over the case backlog in the Office of Administrative Appeals.85/ An additional step it should take to streamline that final layer of agency review would be to promulgate formal rules of appellate procedure. It has also been suggested that a 3-member appellate panel should be created to review ALJ decisions in whistleblower cases, and to permit interlocutory appeals from ALJ decisions on certain issues.86/

Like DOL, the NLRB, Mine Safety and Health Review Commission and Interior Board of Land Appeals also provide on-the-record APA hearings. In railroad cases, the decisional body is the National Railroad Adjustment Board which does not provide an APA hearing, and in four categories of cases (nonappropriated fund employees, shipping containers, migrant workers and OSHA), the adjudicatory mechanism is a civil action in district court.

Given the caseload of the district courts, reliance on conventional civil actions rather than appellate court review of agency action in several of these important antiretaliation programs makes little sense. And in the case of complaints under section 11(c) of the Occupational Safety and Health Act, such reliance makes no sense at all when combined with the fact that the complainant has no control over the litigation, *i.e.*, if the agency chooses to dismiss a complaint, the employee can only appeal that decision within the Department of Labor;87/ there is no provision for judicial review of the agency's decision not to pursue a section 11(c) case and no private right of action under that provision.88/ This is in sharp contrast with the other provisions which permit an employee who is disappointed with the outcome of an agency APA hearing to seek judicial review.

Another noteworthy aspect of the adjudicatory process involves the responsibility for representation of the employee. In MSHRC proceedings, the miner is prepresented by MSHA if the agency believes the complaint to be meritorious,89/ but in OALJ cases under the envirnomental laws, the Wage and Hour Division and the Secretary represent neither party.90/ Under the STAA, the Assistant Secretary for Occupational Safety and Health can prosecute the trucker's case in the OALJ hearing.91/ Under the NLRA, the General Counsel prosecutes.

Here again, the reasons for the discrepancies from one program to another are difficult to fathom. One would think that the same rule should apply across the board, but at the same time it is not clear tht every complainant will want or need the prosecutorial assistance of the investigatory agency. Where the complainant is privately represented, the interest in careful husbanding of agency resources (including the need to limit what might otherwise be redundant presentations in the hearing) suggests that the agency should step aside--not dropping out of the proceeding, but taking a more passive role, in deference to the trial strategy of the party's chosen counsel. That role would differ if the individual chooses to represent himself or herself, in which case a more active posture would be appropriate, in the interest of ensuring a full and effective airing of the issues. In short, the Secretary should not be required to represent a party who already has counsel, but if the investigatory agency concludes that the case is meritorious, it should be available to prosecute if the complainant so desires.

The statutes frequently set forth a schedule for agency action on the employee's complaint.92/ These schedules are more honored in the breach than the observance,93/ and they probably serve little practical purpose.94/ To the extent that they indirectly encourage hasty investigative agency positions in complex cases, they may well be counterproductive. Table 8 shows elapsed time for DOL case processing. To some extent the numbers may be misleading since it is often the case that both sides--and the ALJ--will agree that more time is needed if the substantive purpose of the statute is to be served. Litigants may and often do want to relax the schedule in any given case if, for example, more discovery is needed, or anticipated procedural or evidentiary complexities arise. The consented-to delays do not account for all the cases, but they suggest that a "rule of reason" or *modus vivendi* evolves, whatever the statutory language. The extreme delays in some cases are, however, whether consented to or not, a matter of concern, and the responsible officials may want to ensure that case-tracking mechanisms are in place to keep matters from getting out of hand.

Not suprisingly, both employer and employee representatives have expressed frustration with the current arrangements for DOL hearings. For example, employee counsel have called attention to what they perceive as a pattern of discovery abuse by industry counsel.95/ In one current case, there is a dispute over whether an employer's counsel frustrated the employee's ability to obtain the testimony of a needed witness.96/ On the other hand, some believe that there is a danger of providing a forum for frivolous claims, with no penalty to the complainant who can impose substantial costs on an employer simply by filing a complaint.97/ This criticism overlooks the fact that if a complainant violates an ALJ order, he may be defaulted,98/ although that is not a complete answer to the objection. None of the statutes provide for attorneys fees to be awarded against complainants.

To the extent that the current arrangements are deficient in failing to provide for judicial enforcement of DOL subpoenas, that omission should be remedied as soon as possible along the lines available for enforcement of other agency subpoenas.99/ Until Congress takes such action, the main protection against stonewalling in discovery is the availability of adverse inferences100/ or sanctions such as those provided under Rule 37(b)(2) of the Federal Rules of Civil Procedure.

Sanctions alone, however, are not a sufficient response to willful failure to cooperate with discovery in a health or safety whistleblowing case because more is at stake than merely the outcome of the individual case. The public interest may require that the facts be developed in such a case, not simply that the individual employee obtain relief, whether through sanctions or a settlement. Moreover, even after judicial enforcement of subpoenas becomes available, ALJs should still be at liberty to draw adverse inferences or impose sanctions in the event of failure to make discovery because the need to apply to a federal court for subpoena enforcement may be too time-consuming and costly for the party seeking enforcement101/--even though enforcement proceedings are supposed to be summary in nature.102/ A party's failure to press for judicial enforcement of an agency subpoena should for this reason not preclude either adverse inferences or appropriate agency sanctions.

Misconduct by counsel--another of the charges levelled by the complainant bar--is a serious matter that can thwart the achievement of congressional objectives and thereby endanger public health and safety. The arrangements currently in place certainly give agency decisionmakers ample authority to penalize such misconduct, and that authority should be invoked when good cause is shown.103/ In the unlikely event that ALJs prove to be indifferent on this score, the Secretary of Labor can be expected to take a firm stand on review. In addition, the usual forums for the consideration of ethical violations remain available. If the misconduct goes to far as to deprive a party of a fair hearing, the decision should be set aside on judicial review.

6. Remedies. The basic remedies available under the employee protection statutes are the familiar ones of backpay, reinstatement and attorney fees. In some instances, additional relief may be ordered. For example, actual damages are authorized under a number of statutes, and a variety of kinds of injury have been compensated for under those provisions.104/ These include medical expenses, front pay, and job search expenses. In one ERA case, an employee was awarded $10,000 for mental pain and suffering and injury to reputation.105/ Another received $70,000 "to cover past and future medical expenses . . . and as recompense for . . . humiliation and mental suffering."106/ Exemplary or punitive damages are specifically authorized under only two of the environmental employee protection provisions (SDWA and TSCA); in other contexts the Department of Labor has held such damages to be unavailable.107/ Why those statutes alone have that provision is unclear aside from having been inspired by a common model. There is no conceivable reason for this discrepancy; a single rule should apply.

Agencies are also authorized to order abatement of the employer's conduct as well as "affirmative action," although little, if any, use has been made of the latter power. It is to be expected that future cases will see an increase in use of the "affirmative action" power.

Under the FMSHA and STAA, Congress has authorized interim relief of temporary reinstatement pending of complaining employees. Under both of these provisions, temporary reinstatement without a prior evidentiary hearing has been found unconstitutional; in the STAA case, the Supreme Court has the matter under advisement.108/

Other remedies may well be available through the program agency if, for example, that agency is responsible for licensing the employer in some fashion. This is true under the Atomic Energy Act, and the NRC has taken administrative action against licensees on the basis of whistleblowing by employees.109/ However, as the NRC has indicated,110/ "the action taken by NRC focuses on the licensee to change the conduct of the discriminator. It is not a direct remedy to the employee."

7. Judicial Review. The arrangements for judicial review, outlined in Table, 1, fall into two basic categories. In the case of surface mining and railway whistleblowing, review lies

in the district courts; in the other cases, agency action is reviewed in the courts of appeals. Given the similarity of the issues likely to be explored in all such cases, uniform review at the court of appeals level (in keeping with a prior Conference recommendation) would be appropriate once there was underlying uniformity as to agency hearing procedures. Since surface mining cases go through the Interior Department hearing process with review by the Board of Land Appeals, there would seem to be no reason to require an intermediate stop at the district court.111/

A more fundamental concern has to do with the fact that under OSHA and the Asbestos Hazard Emergency Response Act, if the investigatory agency declines to bring a civil action for the employee, the employee cannot obtain judicial review of that decision, and also cannot bring his own action against the employer. Agency decisions not to prosecute are understood to be non-reviewable, but that doctrine would seem to have no application where an individual employee has been harmed by the violation of a prohibition on retaliation. There is no apparent reason for closing the courthouse doors to such individuals while keeping them open under so many of the other statutes. If nothing else, such an approach drives whistleblowing cases into the state courts under state doctrines, even though the federal interest may be paramount.112/

8. Interaction with Program Agencies. As Senator Grassley stressed at the Conference's October 1, 1986 public hearing, it is important not only that the whistleblower be protected from retaliation, but also that the substantive safety and health concern be addressed.113/ This requires close coordination between the agencies responsible for the underlying regulatory program and those responsible for administration of the anti-retaliation provisions.

To date, the program and investigative agencies have taken some steps to foster coordination to achieve better compliance with underlying safety and health obligations. Thus, the Wage and Hour Division and the NRC have a Memorandum of Understanding ("MOU") setting forth the working arrangements between their two agencies in nuclear whistleblowing cases.114/ That arrangement is viewed as ineffective by attorneys representing employees.115/ Similarly, OSHA and the NLRB have an MOU for the coordination of litigation under section 11(c) of OSHA and section 8 of the NLRA,116/ and MSHA and the Labor Board have entered into an agreement for the overlap in their jurisdictions.117/ Other agencies have not pursued the same approach.118/ For example, the Department of Transportation has only an informal working arrangement with the Department of Labor for cooperation in cases arising under the Surface Transportation Assistance Act,119/ and EPA (which has substantive responsibility for several environmental laws that have antiretaliation provisions) has no written understanding with DOL. It also remains possible for a single act of retaliation to trigger more than one statutory scheme. Where this is the case, the agencies should either be permitted to conduct a joint hearing or one should serve as "lead agency" for the dispute. If all federal anti-retaliation protections were consolidated, the potential for wasteful duplication would be avoided.120/

Given the fact that whistleblower protection is, after all, intended to protect public health and safety, formal arrangements should be in place to ensure (1) that all investigative agencies receive necessary assistance from program agencies, particularly in cases where technical information is important; (2) that program agencies receive prompt detailed reports of the results of all whistleblowing adjudicatory proceedings; and (3) that complaining employees be advised of the action taken by program agencies to remedy the safety problem about which the whistle was blown.121/

9. Access to Law and Interagency Doctrinal Growth. Two final and, to a degree, related concerns involve the public availability of decisional law and the impediments to interaction between the separate bodies of law being developed by the adjudicatory agencies responsible for the various whistleblower statutes. While the decisions of the MSHRC, NLRB, and Interior Board of Land Appeals are reported, those of the DOL Office of Administrative Law Judges are not. OALJ decisions have been

available only in Washington.122/ That office is responsible for a substantial portion of the overall whistleblower caseload. The result is that litigants before the OLJA have a more difficult time ascertaining the law (thus making proceedings less focused than might otherwise be the case, as well as making it more difficult for employers and employees even to know their basic rights). In addition, the desirable goal of cross-fertilization between the OALJ and other whistleblower adjudicatory agencies is thwarted. This insulation makes little sense and (building on the statutory patchwork) tends to retard the development of a coherent body of law in this area.

Fortunately, the Department of Labor has announced that it will publish all OALJ and Secretarial decisions in whistleblower cases beginning January 1, 1987.123/ This is a desirable step for which the Department should be commended, since employees and employers will be better to determine in advance what is lawful and what is not. However, it would also be useful if pre-1987 decisions were published as well. It is assumed, of course, that appropriate indices will also be provided.

Whether publication of the OALJ decisions is sufficient remains an open question. At present, doing research that steps from one anti-retaliation program to another is needlessly cumbersome because of the variety of reporting services. Publication of the OALJ cases will only partially alleviate that problem. If digesting and indexing continue to be according to separate designs for each agency with responsibility for whistleblowing cases, the present system will not have been improved as much as it could be. This is not to suggest that the bar currently confronts a "Tower of Babel" in the whistleblowing area, but the present arrangements necessarily leave the door open to doctrinal variations where these may be unwarranted. If Congress decides to bring all private sector health and safety whistleblowing jurisdiction under one "roof" with a single set of statutory provisions administered by a single agency, this concern will go away; if Congress does not, serious attention should be given to integrating the reporting arrangements.

Relation to Prior Conference Recommendations

The subject matter of this report touches on several prior administrative conference recommendations:

(a) Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies (Recommendation No. 69-6). While the agencies that were contacted were generally forthcoming with statistical data, in a number of instances it was difficult to obtain important detailed caseload data. The Conference may wish to separately evaluate the effectiveness of data-gathering and -organization from this perspective.

(b) Discovery in Agency Adjudication (Recommendation No. 70-4). In keeping with paragraph 9 of this recommendation, Congress should ensure that agency subpoenas may be issued and judicially enforced in all whistleblowing cases.

(c) Subpoena Power in Formal Rulemaking and Formal Adjudication (Recommendation No. 74-1). The APA amendment prepared by the Conference would ensure compliance with agency subpoenas in whistleblowing cases, thereby improving the quality of agency decisionmaking and the record available for judicial review.

(d) The Choice of Forum for Judicial Review of Administrative Action (Recommendation No. 75-3). In keeping with this recommendation, it is presumed that review of agencies' formal adjudication be in the courts of appeals would be the norm with enforcement by the district courts.

(e) Time Limits on Agency Action (Recommendation No. 78-3). The Conference has questioned the use of legislatively-imposed time limits. While a *modus vivendi* has been reached in the context of the whistleblowing statutes here reviewed, any new legislation should not include such a requirement. Reasonable dispatch should still be the goal, as a matter of agency self-discipline. The available data suggest that it is unrealistic to try to force investigative or adjudicatory process into a rigid timetable. However, Congress might want to consider making it clear that if a deadline for agency action passes without such action, the employee or employer should be able to obtain an APA hearing without having to wait further. Similarly, if final action is withheld beyond the date prescribed, judicial assistance should be forthcoming more readily than has heretofore been permitted by the courts.124/

(f) Agency Structure for Review of Decisions of Presiding Officers under the Administrative Procedure Act (Recommendation No. 83-3). Reference is made below to the need to articulate the procedures for secretarial review of decisions of the DOL Office of Administrative Law Judges.

(g) Preemption of State Regulation by Federal Agencies (Recommendation No. 84-5). It is improbable that a federal agency would have occasion to directly address the question of preemption in a whistleblowing case, unless, for example, a state remedy had been invoked and one side or the other sought to rely on the result for collateral estoppel or res judicata purposes. This seems unlikely because federal statutes of limitation almost certainly mean the federal case would proceed more promptly than the state case. Nonetheless, if such an issue were to arise, the views of the affected state(s) and other interested parties should be obtained in the adjudicatory process through invited amicus presentations. Preemption is further addressed below in the Conclusions and Recommendations.

(h) Coordination of Public and Private Enforcement of Environmental Laws (Recommendation No. 85-3). The information-sharing concerns noted in paragraph 2 of this recommendation apply mutatis mutandis to federal whistleblower programs.

(i) Agencies' Use of Alternative Means of Dispute Resolution (Recommendation No. 86-3). The Conference's recent recommendation concerning ADR arguably bears on the private sector whistleblowing cases. While some private dispute-settlement or avoidance techniques have been tried with a view to encouraging the flow of safety concerns and defusing potential retaliation claims (particularly within the nuclear industry), it is believed that it would be premature to require any such procedure as a precondition to federal administrative adjudication. The Conference might, however, want to suggest that the concerned agencies consider the statute of limitations tolled while permissive internal employer remedies are being exhausted.

Conclusions and Recommendations

Clearly there are important questions for Congress as a result of any careful examination of the current arrangements for the protection of private sector health and safety whistleblowers. Some of these are, the author believes, appropriate for Conference recommendation because they involve issues that are essentially policy-neutral. Based on the study results outlined above, the Conference should make recommendations to the Congress and involved agencies as follows:

(a) Congress should enact omnibus whistleblowing legislation to replace all extant federal private sector health and safety whistleblowing provisions. That legislation should include:

> (i) protection for all private sector employees (including government contractor employees) and state and local government employees against retaliation for whistleblowing with respect to violations of federal safety and health requirements;
>
> (ii) assignment of investigative responsibility to the Secretary of Labor for all private sector health and safety whistleblowing retaliation cases;
>
> (iii) provision for on-the-record Department of Labor APA hearings in all private sector health and safety whistleblowing cases, with discretionary review by the Secretary of Labor, judicial review in the courts of appeals, and enforcement in the district courts;
>
> (iv) a single definition of protected conduct;
>
> (v) a single statute of limitations of not less than 180 days;
>
> (vi) a single provision for remedies (including debarment and suspension of government contractors);
>
> (vii) a grant of subpoena power to the Secretary of Labor for whistleblowing investigations and hearings, with provision for judicial enforcement; and
>
> (viii) a grant of rulemaking authority to the Secretary of Labor with respect to investigative and adjudicatory procedures, notice posting requirements and mandatory coordination with program agencies.

(b) Subject to action by Congress as recommended above, the Secretary of Labor should:

> (i) promulgate rules of appellate procedure governing practice and procedure in connection with the Secretary's review of decisions of the Office of Administrative Law Judges;

(ii) transfer all private sector health and safety whistleblowing investigative responsibility to the Occupational Safety and Health Administration, since (under section 11(c) of Occupational Safety and Health Act and section 405 of the Surface Transportation Assistance Act) that agency currently receives by far the largest number of private sector health and safety whistleblowing complaints;

(iii) develop, in consultation with the agencies responsible for the substantive regulatory program, detailed written procedures that are as nearly uniform as the Secretary deems practicable for coordinating investigation, adjudication and follow-up in whistleblowing cases; and

(iv) cause to be indexed and published all ALJ and Secretarial decisions in whistleblowing cases, including those rendered prior to January 1, 1987.

In addition to these changes, Congress and the Executive Branch may wish to address a number of related issues, such as the question of preemption. As was persuasively explained at the public hearing held by the Conference on October 1, 1986,125/ there is a considerable amount of whistleblowing litigation in the state and federal courts, resting not on federal whistleblowing protections, but on state law doctrines such as the public policy exception to the employment-at-will doctrine.126/ State law doctrines are evolving rapidly in this area, and it would be premature to consider legislation preempting state causes of action for retaliation that could be adjudicated in a federal forum. Given the current doctrinal ferment, this is an area which in the words of Justice Brandeis in New State Ice Co. v. Liebmann come to mind:

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.127/

Or, as the First Circuit recently put it in a different context, "[t]he cutting edge of reform should be left to uncoerced community initiatives."128/

For the moment at least, and mindful of the approach the Conference took in Recommendation No. 84-5, the author recommends that States be permitted to continue to pursue their own courses of legal development. That process, so deeply rooted in our federal system, should not lightly be derailed, particularly at a time when all federal programs are under increasing scrutiny to prevent inappropriate intrusion on areas traditionally of concern to the states.

Anoother issue--which is potentially freighted with political-considerations--is the question of reassigning the responsibility for adjudication of safety-based whistleblowing retaliation complaints. The processes that led to the creation of an independent Mine Safety and Health Review Commission with responsibility for such cases and the creation of an independent Occupational Safety and Health Review Commission without such responsibility probably are of such a nature that recommendations for change will be of little utility absent a definite consensus among the interested constituencies.

In the circumstances, the Conference may conclude that it would be best advised to confine its recommendations to more structural or adjectival matters such as the enactment of uniform standards for protected conduct, adjudicatory procedures and remedies, strengthening the hearing process through judicially-enforceable subpoenas, and rationalization of the arrangements for judicial review.129/ That said, however, it would certainly seem that broader coverage of employees in industries with health and safety impacts is in order, and that all private sector health and safety federal whistleblowing protections ought to be administered by a single adjudicatory agency in the interest of fostering like treatment of like cases and maximizing the development of adjudicative expertise in employee protection matters.

Based on this study, there is reason for concern on several fronts, aside from the overall need to restructure, extend and rationalize the federal government's protection of health and safety whistleblowers in the private sector. The data indicate that in many cases it takes far longer than Congress contemplated to investigate and adjudicate whistleblowers' claims. Such delays, which may reflect resource problems, can also arise where the parties and ALJ conclude that more time is needed to do a proper job. Where the parties do not so agree, however, the delay may deter some complainants. Delay may ill serve employer interests as well. In addition, the study suggests a need for greater interagency coordination. Consolidation of adjudicatory functions is an important step towards the solution of that problem, but so long as numerous program agencies have an interest in the subject, the need for improved coordination will be substantial. The Department of Labor may want to consider addressing this problem by developing a program for regular interagency coordination of policies with regard to the protection of whistleblowers, with the result a multi-agency omnibus Memorandum of Understanding and an established interagency coordinating body to encourage communication and interaction among the agencies and responsible staff.

Finally, although nothing in this study should be understood as intimating an opinion on whether justice was done in any particular whistleblowing case, it is concluded that (1) 30-day statutes of limitations are unreasonable, (2) judicially-enforceable subpeonas are essential to the conduct of effective whistleblowing adjudications, and (3) it offends basic notions of fairness that under section 11(c) of the Occupational Safety and Health Act or section 211 of the Asbestos Hazard Emergency Response Act victims of retaliation have no access to the federal courts if their cases are not pursued by the Department of Labor.

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2 In this report the term is also used to cover, where appropriate, employee refusals to work based on safety concerns. Such refusals are conceptually distinct from the core notion of whistleblowing identified in the text. They have, however, been treated as one as often as not and are included in this study. They are further addressed below under the heading of "Protected Conduct."

3 Other federal laws protect private sector whitleblowers in non-health and safety contexts. A recent example is section 3 of the False Claims Amendments Act of 1986, Pub. L. No. 99-562, which amended 31 U.S.C. § 3730 (1982). In addition, numerous statutes prohibit retaliation against persons who complain of discrimination. *E.g.,* Title VII, 42 U.S.C. § 2000(e)-3(a) (1982); Age Discrimination in Employment Act, 29 U.S.C. § 623(d) (1982). Because they do not relate to health and safety programs, these provisions are beyond the scope of the present study. Programs applicable to federal employees are also beyond the scope of this study although they are noted below and applicable legislation is identified in Table 2.

4 *See, e.g.,* S. 2516, 99th Cong. 2d Sess. (1986) (generic protection for employees of government contractors).

5 Two excellent works that attempt a comprehensive view of federal protection of private sector whistleblowers are L. Larson & P. Borowski, *Unjust Dismissal* (1986 & Cum. Supp. Sept. 1986), and S. Kohn; *Protecting Environmental and Nuclear Whitleblowers: A Litigation Manual* (Gov't Accountability Project 1985).

6 The Supreme Court recently held that temporary reinstatement of a complainant prior to a full evidentiary hearing does not violate the employer's due process rights as long as certain preliminary procedures are available, and a full post-reinstatement hearing is expeditiously held. *Brock v. Roadway Express, Inc.*, No. 85-1530 (U.S. Apr. 22, 1987.) MSHRC regulations comply with this standard. 51 Fed. Reg. 16022 (Apr. 30, 1986).

7 For earlier recommendations for omnibus legislation see Abbot, *Remedies for Employees Discharged for Reporting an Employer's Violation of Federal Law*, 42 Wash. & Lee L. Rev. 1383, 1400 (1985); Jenkins, *Federal Legislative Exceptions to the At-Will Doctrine: Proposed Statutory Protection for Discharges Violative of Public Policy*, 47 Alb. L. Rev. 466, 513-24 (1983).

8 *United States v. New York Telephone Co.*, 434 U.S. 159, 175 n.24 (1977).

9 Congress could, for example, pass a law making it a crime to interfere with or discourage whistleblowing in areas of activity that fall within the federal government's sphere. The Ku Klux Klan Act, 18 U.S.C. § 241 (1982), the literal terms of which might cover such misconduct, has been given a narrow application, and there is no record of it having been used in this fashion.

10 *See, e.g.*, 18 U.S.C. § 3059 (1982).

11 19 U.S.C. § 507 (1982), *as amended by* Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 3152. Some states also have laws making it a crime not to aid a policeman in an emergency. *See* Wash. Post, Nov. 11, 1972, at A7, col. 1 (N.C.).

12 Another disincentive removal would be to debar government contractors who retaliate against whistleblowers. This was proposed in the case of the Morton Thiokol engineers referred to above, *see* H.J.R. 634, 99th Cong., 2d Sess. (1986), but the matter died in committee. One of the engineers has sued the company and asserted an FTCA claim against NASA. *Boisjoly v. Morton Thiokol Inc.*, Civil No. 87-194 (D.D.C. filed Jan. 28, 1987), *noted in* N.Y. Times, Jan. 29, 1987, at A16, col. 1.

13 *E.g.*, 29 C.F.R. § 24.1(a) (1986).

14 33 U.S.C. § 1367(e)(1982); 40 C.F.R. Pt. 108 (1986). *See also* 24 U.S.C. § 9610(e)(1982)(CERCLA); 42 U.S.C. § 6971 (e) (1982)(SWDA).

15 *See* 14 C.F.R. Pt. 314 (1986); 29 C.F.R. Pt. 220 (1986).

16 *See* Asbestos Hazard Emergency Response Act of 1986, Pub. L. No. 99-519, § 211.

17 The growth of interest in the whistleblowing area is eloquently attested by the fact that scholarly writers now no longer feel a need to set out the history. *E.g.*, Jenkins, *Federal*

Legislative Exceptions to the At-Will Doctrine: Proposed Statutory Protection for Discharges Violative of Public Policy, 47 Alb. L. Rev. 466, 467 & n.11 (1983); Bouffard, *Retaliatory Discharge: A Public Policy Exception to the Employment At-Will Doctrine in Maine*, 38 Me. L. Rev. 67, 70 n.6 (1986).

18 Feinman, *The Development of the Employment at Will Rule*, 20 Am. J. Legal Hist. 118, 126-27 (1976).

19 *See generally* L. Larson & P. Borowski, *supra*, § 2.04 *et seq*.

20 For a summary of federal common law developments in the wrongful discharge area see L. Larson & P. Borowski, *supra*, § 11.04.

21 The best single catalogue of the federal statutes appears in L. Larson & P. Borowski, *supra*, § 11.02-.03. Also very thoughtful are the articles by William R. Jenkins, cited *supra*, and Kohn & Kohn, *An Overview of Federal and State Whistleblower Protections*, 4 Antioch L.J. 99 (1986). Federal regulations also require state OSHA plans to include employee protection provisions. 29 C.F.R. § 1902.4(c)(2)(v) (1986).

22 Abbreviations appear in Table 10; citations to statutes and implementing regulations appear in Table 9.

23 Pub. L. No. 99-661, § 942(a)(1), *adding* 10 U.S.C. § 2409(a).

24 Section 502 of the Labor Management Relations Act, 29 U.S.C. § 143 (1982), stands on a somewhat different footing from the other statutes. It creates no remedy for retaliation, but rather prevents an employer from invoking a collective bargaining agreement's no-strike clause where one or more employees quits work "in good faith because of abnormally dangerous conditions."

25 *See, e.g., Murphy v. Consolidation Coal Co.*, No. 83-ERA-4 (DOL Jan. 17, 1985) (approving settlement under TSCA); *Murphy v. Consolidation Coal Co.*, No CH3-1-D (DOI Jan. 14, 1985) (dismissing SMCRA case upon settlement).

26 Glazer & Glazer, *The Whistle-Blower's Plight*, N.Y. Times, Aug. 13, 1986, at A23, col. 1.

27 Kleinfeld, *The Whistle Blowers' Morning After*, N.Y. Times, Nov. 9, 1986, § 3, at 1, cols. 2,4 (noting conclusion of Glazer research). "But that doesn't mean they always are reduced to dire poverty and icy isolation. Often, they are reincarnated in some new position." *Id*.

28 *Bauch v. Landers and State of Florida Dep't of Environmental Regulation*, Dkt. No. 79-SDWA-1 (OALJ). *See also, e.g., Chase v.*

Buncombe County, N.C., Dep't of Community Improvement, Dkt. No. 85-SWD-4 (Solid Waste Disposal Act; county landfill employee). In contrast, a state employee was held not protected under the Surface Mining Control and Reclamation Act on the theory that the state is not a person within the meaning of § 703 of that Act. *Leber v. Pa. Dept. of Environmental Resources*, 780 F.2d 372 (3d Cir.), *cert. denied*, 106 S.Ct. 3294 (1986).

29 *E.g.*, *McAllen v. EPA*, Dkt. No. 86-WPC-1 (OALJ Nov. 28, 1986); *Conley v. McClellan Air Force Base*, Dkt. No. 84.-WPC-1 (OALJ Sept. 12, 1984); *McGough v. U.S. Navy*, Dkt. No 86-ERA-18 (OALJ Aug. 19, 1986), slip op. at 3 n.3 (dictum). *But see Wensil v. B.F. Shaw Co.*, Dkt. No. 86-ERA-15 (OALJ July 8, 1986) (DOE contractor employees at plant not licensed by NRC *held* not protected, despite plain meaning of statute); Wash. Post, Jan. 8, 1987, A17, col. 1, at A18, col. 1 (noting pendency of *Wensil* jurisdictional issue regarding Savannah River DOE plant).

30 *E.g.*, *George v. Aztec Rental Center, Inc.*, 763 F.2d 184 (5th Cir. 1985); *Holmes v. Schneider Power Corp.*, 628 F.Supp. 937 (W.D. Pa. 1986); L. Larson & P. Borowski, *supra*, § 11.03 [20], at 11-38. This applies to conventional whistleblowing; in refusal- to-work situations, the employee can seek mandamus to require the Secretary to enforce the statute. 29 U.S.C. § 662(d) (1982).

31 *See also* Schibley, *The Employment-at-Will Doctrine: Providing a Public Policy Exception to Improve Worker Safety*, 16 U. Mich. J.L. Reform 435, 439-40 (1983) (noting deficiencies in DOL personnel and resources); B. Mintz, *OSHA History, Law, and Policy* 342 (1984).

32 *But see* 73 U.S. Dep't of Labor Ann. Rep. for FY85 121 (1986) (reference to "substantial increase" in § 11(c) cases, among others).

33 Solomon & Garcia, *Protecting the Corporate Whistle Blower Under Federal Anti-Retaliation Statutes*, 5 J. Corp. L. 275, 283 (1980).

34 1984 OSHA Ann. Rep. 56 (1985).

35 *Id.*

36 Teamsters for a Democratic Union, *Convoy Dispatch*, No. 59, at 3, col. 3 (Feb. 1986).

37 *Id.*

38 In FY85 and FY86, the full MSHRC decided 11 cases of safety complaints or refusals to work. Three cases involved both kinds of discrimination, 5 involved only safety or health complaints,

and 3 involved only a refusal to work. Letter from L. Joseph Ferrara, General Counsel, MSHRC, to the author, Oct. 31, 1986.

39 Testimony of Hon. Nahum Litt, Chief Judge, OALJ, Tr. 45-46.

40 *See* Letter from James Y. Callear, Freedom of Information Officer, NLRB, to the author, Sept. 4, 1986. For example, in 1985, the Board decided 8 cases involving safety-based refusals to work.

41 Off. of Special Counsel Ann. Rep. for FY85 15 (1985).

42 *See Paul v. FMSHRC*, No. 85-1801 (D.C. Cir. Feb. 27, 1987) (mining engineer *held* not a miner). Another controversial issue of coverage involves the application of environmental whistleblower provisions to prison inmates. *See* Wash. Post, Feb. 12, 1987, at A25, col. 3 (noting OALJ ruling that federal inmate is protected by Clean Air Act antiretaliation section).

43 *See, e.g.*, Department of Energy Order No. 5483.1A; *In re Mestres*, Department of Energy Spec. App. Bd. (Dec. 27, 1984), *noted in* Wash. Post, Jan. 29, 1985, at A17, col. 1. Protection may also be afforded under contractual provisions. *See* Testimony of James E. Jensen, Tr. 107 (TVA).

44 132 Cong. Rec. H2710 (daily ed. May 14, 1986). Rep. Markey proposed debarring the employer.

45 Pub. L. No. 99-661, § 942, ____ Stat. ____, *adding* 10 U.S.C. § 2409.

46 *See* N.Y. Times, Sept. 21, 1986, at 1, col. 1 and 36, col. 2 (claim of discharge in retaliation for refusing to sign report that omitted details on flaws in new Army troop carrier).

47 Federal Government Contractors Personnel Protection Act of 1986, S. 2516, 99th Cong., 2d Sess. (1986). S. 2516 would have created a federal cause of action, enforceable by the individual in district court, for any reprisal against an officer or employee of a government contractor for disclosing to an agency information the individual "reasonably believes indicates . . . a substantial and specific danger to public health or safety." The agency head would also have been empowered to impose civil penalties of up to $500,000 per reprisal, subject to an on-the-record APA hearing with judicial review in district court.

48 Letter from John F. Sherman, III, Assistant Gen'l Counsel, New England Power Service Co., to the author, Dec. 15, 1986.

49 In one case, quoted in S. Kohn, *supra*, at 28, the Labor Department found that disclosures to news media were also protected under the WPCA. *See also* Kohn & Carpenter, *Nuclear Whistleblowing Protection and the Scope of Protected Activity under Section 210 of the Energy Reorganization Act*, 4 Antioch Ln.73, 86-89 (1986).

50 *Compare* *Brown & Root, Inc. v. Donovan*, 747 F.2d 1029 (5th Cir. 1984), *with* *Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 92 L. Ed.2d 724 (1986), *and* *Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984). *See also* *Wheeler v. Caterpillar Tractor Co.*, 108 Ill.2d 502, 485 N.E.2d 372, *cert. denied*, 90 L.Ed.2d 187 (1986).

51 S. Kohn, *supra*, at 28-29 (collecting cases).

52 *Meyers Industries, Inc.*, 281 NLRB No. 118, at 19 (Sept. 30, 1986), *pet. for review filed sub nom.* *Prill v. NLRB*, No. 86-1675 (D.C. Cir. Dec. 11, 1986). *See generally* Fasman, *Labor Board Adopts Conservative View on Employee Rights*, Legal Times, Nov. 10, 1986, at 12.

53 The Supreme Court has recognized that "parties may have a choice of federal remedies," *Connell Construction Co. v. Plumbers & Steamfitters Local Union 100*, 421 U.S. 616, 635 n.17 (1975), but one wonders whether dual federal remedies are necessary in the whistleblowing area. If federal whistleblowing legislation were reorganized as recommended *infra*, there would be less need to be concerned about limitations on the gloss applied to the NLRA, and no need for two federal agencies to address a single issue.

54 *Id*. *Meyers Industries*, *supra*, at 19.

55 *Prill v. NLRB*, No. 86-1675 (D.C. Cir. filed Dec. 11, 1986).

56 *See* Table 3 *infra*. While the statute is silent, the Secretary of Labor has construed the ERA to protect good faith reasonable refusals to work, *Pensyl v. Catalitic Inc.*, No. 83-ERA-2 (SOL Jan. 13, 1984), on the theory that the ERA and FMSHA are *in pari materia*. Slip op. at 5.

57 *See generally* Nothstein, *Employee Refusals to Work*, Labor (Fall 1982).

58 *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 (1984).

59 *Meyers Industries, Inc.*, *supra*, at 20.

60 29 U.S.C. § 143 (1982).

61 29 C.F.R. § 1977.12(b)(2) (1986).

62 445 U.S. 1 (1980).

63 *E.g.*, *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974) (requiring subjective good faith and objective

reasonableness under LMRA). FMSHA § 815(c) has been held to apply refusals to work based on a reasonable, good faith belief that the safety of another employee will be endangered. Consolidation Coal Co. v. FMSHRC, 795 F.2d 364 (4th Cir. 1986).

64 Compare Richter v. Baldwin Associates, No. 84-ERA-09/10/11/12 (SOL Mar. 12, 1986) (pro se complaint, detailed pleading not required), with Testimony of Mozart G. Ratner, Tr. 100-01.

65 The FLSA is not listed on the chart because, although the child labor provisions of that legislation have a health and safety component, retaliation cases under those provisions are virtually unheard of.

66 Tr. 40-41, 73; GAP-TLPI Testimony at 11.

67 Letter from Julie Fosbinder, Teamsters for a Democratic Union, to Jeffrey S. Lubbers, Dec. 1, 1986 (referring to Bureau of Motor Carrier Safety, Dep't of Transportation.)

68 See Energy Reorganization Act of 1974, § 2(c), Pub. L. No. 93-438, 88 Stat. 1233.

69 Under DoD87, investigations are done by the IG, thus providing a measure of independence from the procurement agency. On the other hand, the IG's report simply goes to the Secretary, who naturally has ultimate responsibility for procurement.

70 See Table 7 infra.

71 See 29 C.F.R. § 18.12 (1986) (amici restricted to filing briefs).

72 10 C.F.R. § 50.7(c) (1986).

73 The NRC has also taken this step. 10 C.F.R. § 50.7(e) (1986). The Wage and Hour Division has imposed other notice-posting requirements by regulation. E.g., 29 C.F.R. § 500.76(d)(1) (1986) (MSAWPA). See also id. § 516.4 (FLSA); id. § 1903.2(a) (OSHA); 42 U.S.C. § 2000e-10 (1982)(EEOC).

74 Testimony of Kennedy P. Richardson, Tr. 57-60; See also Letter from Kennedy P. Richardson to Jeffrey S. Lubbers, Dec. 2, 1986 suggesting, in the alternative, that the 30-day limit for WHD investigations be precatory).

75 Cf. 42 U.S.C. § 2000e-5(f)(1)(1982) (aggrieved person may institute civil action if EEOC dismisses complaint or fails to sue within 180 days of filing of charges.)

76 Testimony of Stephen M. Kohn, Tr. 84. *But see* Letter from Kennedy P. Richardson to Jeffrey S. Lubbers, Dec. 2, 1986 at 2-3: "The hypothesis that the Wage and Hour Division is necessary to induce private attorneys to prosecute Section 210 cases is refuted by the fact that no such inducement has ever been necessary for common law wrongful discharge claims and the fact that section 210 authorizes the administrative law judge to award attorney's fees which may well exceed what the attorney would otherwise receive under a typical contingent fee agreement. Nor is the Wage and Hour Division investigation necessary to 'screen out' frivolous cases since most private attorneys will decline to undertake cases with no plausible merit."

77 *See* Testimony of Sen. Charles E. Grassley, Tr. 14. 29 C.F.R. § 516.4 (1986). Another approach might be to encourage or require professionals such as engineers to avail themselves of professional societies' safety committees when ethical issues arise. Unfortunately, these mechanisms are not well known. *See* Lindorff, *Engineers' Duty to Speak Out*, The Nation, June 28, 1986, at 880. In addition, employees often do not have the luxury of being able to formulate a request for an opinion, and committees such as these lack the tools to find needed facts on issues that are often hotly contested.

78 *See generally* Wargo, *Tracking Employee Concerns*, 32 Nucl. Ind. No. 1, 3 (Jan. 1985).

79 *Durham v. Butler Service Group*. No. 86-ERA-9 (OALJ 1986), *discussed in Safety Concerns Programs Challenged by Intervenors*, 33 Nnd. Ind. No. 6, 16-17 (June 1986). Access to documents obtained under the SAFETEAM program marketed by a subsidiary of the Detroit Edison Co., *see generally* Heffner, *Limiting Risk: Improving Public Perception of Nuclear Plant Safety Through SAFETEAM* (remarks at American Nuclear Society Annual Meeting, Nov. 12, 1985), was permitted, subject to a protective order, in *Texas Util. Elec. Co* (Comanche Peak Stream Elec. Station, Units 1 & 2), Dkt. Nos. 50-445 to 446 (A.S.L.B. Dec. 23, 1985).

80 *See* Letter from Kennedy P. Richardson to Jeffrey S. Lubbers, Dec. 2, 1986, at 2.

81 *Id*.

82 Applicable procedural regulations appear in 29 C.F.R. Pt. 24 (1986). *See generally* S. Kohn, *supra*, chs. 1, 5-6, 8-9.

83 *See* 5 U.S.C. § 557(c) (1982); 24 C.F.R. § 24.6 (1986).

84 Testimony of Stephen M. Kohn, Tr. 70-71.

85 *See* 73 U.S. Dep't of Labor Ann. Rep. for FY85 174 (1986) (*noting* survey performed by IG). As of October 1, 1986, that office reports to the Undersecretary rather than the Solicitor of Labor. Testimony of Judith E. Kramer, Tr. 21.

86 Letter from Mozart G. Ratner to Jeffrey S. Lubbers, Dec. 10, 1986, at 2. The suggestion for an appellate panel appears to contemplate that the panel's jurisdiction would be nondiscretionary and that its decisions would not be subject to further review by the Secretary of Labor. An alternative might be to have a panel to hear argument on behalf of the Secretary, as was formerly done in connection with merchant marine disciplinary proceedings. *See* Fidell, *Improving Competence in the Merchant Marine: Suspension and Revocation Proceedings* 45 Mo. L. Rev. 1, 23 at n.151 (1980).

87 OSHA Inst. CPL 2.45A, ¶ 6 (Mar. 8, 1984).

88 S. Kohn, *supra*, at 174, *citing* *Taylor v. Brighton Corp.*, 616 F.2d 256, 258 (6th Cir. 1980).

89 30 U.S.C. § 815(c)(2) (1982); T. Means, *Discrimination and Miners' Rights Under the Federal Mine Safety and Health Act of 1977* 21 & n.105 (1984).

90 Wage & Hour Div., Field Operation Handbook § 52x03(e).

91 29 C.F.R. §§ 1978.107-.108, 51 Fed. Reg. 42093-94 (1986).

92 *E.g.*, 15 U.S.C. § 2622(b)(2)(A)(1982)(TSCA); 42 U.S.C § 5851(b)(2)(A)(1982)(ERA); 42 U.S.C. § 7622(b)(2)(A)(1982)(CAA); 42 U.S.C. § 300J-9(i)(2)(B)(i)(1982)(SDWA); *see also* 29 C.F.R. § 24.6(b)(1) (1986).

93 *Compare* S. Kohn, *supra*, at 3 & n.15, *and* Letter from Julie Fosbinder, Teamsters for a Democratic Union, to Jeffrey S. Lubbers, Dec. 1, 1986, at 2 (noting delays of up to 600 days in processing STAA complaints), *with* Brief for Appellants at 49 n.26, *Brock v. Roadway Express, Inc.,* No. 85-1530 (U.S.) (suggesting that prolonged delay in secretarial decision is not typical under STAA), *and* U.S. Dep't of Labor, Off. of Administrative Law Judges, *Summary of "Traditional" Labor Cases Adjudicated by the Office of Administrative Law Judges* 56-57 (1984) (postponements granted only for compelling reasons; time constraints in whistleblower cases "uniquely restrictive"). In one case arising under the ERA, it took the Wage and Hour Division over eight months to conclude that the 30-day statute of limitations barred the complaint. *Rose v. Sec'y of Labor*, 63 Ad.L.2d 889, 892 (6th Cir. 1986) (Edwards, J., concurring). DOL regulations call for the investigation to be completed in 30 days.

94 These periods are treated as directory, *i.e.*, precatory. *See, e.g.*, 29 C.F.R. § 1978.114, 51 Fed. Reg. 42095 (1986)

95 GAP-TLPI Testimony at 4-6; Testimony of Stephen M. Kohn, Tr. 71-72.

96 GAP-TLPI Testimony at 4 & 6 n.13; Galen, *An Ethical Furor Over a Witness*, Nat'l L.J., Dec. 22, 1986, at 3.

97 Tr. 84-86; *see also id*. at 97 (testimony of Mozart G. Ratner, dubitante).

98 29 C.F.R. § 24.5(e)(4)(1986).

99 *E.g.*, Atomic Energy Act §§ 161(c), 233, 42 U.S.C. § 2201(c), 2281 (1982); *see generally* 3 B. Mezines, J. Stein, & J. Gruff, *Administrative Law* § 21.02 (G. Mitchell rev. 1985); 1 K. Davis, *Administrative Law Treatise* § 4.6 (2d ed. 1978); Fed. R. Civ. P. 81(a)(3).

100 *See Industrial Union Dep't v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972).

101 *Id*. at 1339.

102 *E.g.*, *EEOC v. K-Mart Corp.*, 694 F.2d 1055, 1064 (6th Cir. 1982).

103 *See, e.g.*, *Hasan v. Nuclear Power Services, Inc.*, No. 86-ERA-2 (OALJ Sept. 25, 1986) (disqualifying counsel).

104 *See* S. Kohn, *supra*, at 61-62 (collecting cases).

105 *DeFord v. TVA*, No. 81-ERA-1 (DOL Apr. 30, 1984), *following remand from DeFord v. Secretary of Labor*, 700 F.2d 281 (6th Cir. 1983).

106 *English v. General Elec. Co.*, No. 85-ERA-2 (ALJ Aug. 1, 1985), *noted in* N.Y. Times, Aug. 4, 1985, at 23, cols. 1, 6.

107 *See* Table 6 *infra*; *Landers v. Commonwealth-Lord Joint Venture*, 83-ERA-5, ALJ op. at 17 (1983), *noted in* S. Kohn, *supra*, at 64 & n.18. Under several of the statutes, exemplary damages may be awarded if a civil action is brought to secure compliance with the Secretary's order. *See* 15 U.S.C. § 2622(d)(1982)(TSCA); 42 U.S.C. § 300J-9(i)(4)(1982)(SDWA); 42 U.S.C. § 5851(d)(1982)(ERA); 42 U.S.C. § 7622(d)(1982)(CAA).

108 *Brock v. Roadway Express, Inc.*, No. 85-1530 (U.S.) (pending); *see also Southern Ohio Coal Co. v. Donovan*, 774 F.2d 693 (6th Cir. 1985).

109 *See* 10 C.F.R. § 50.7(c) (1986).

110 Letter from A.B. Beach, Dep. Dir., Enforcement Staff, Off. Of Inspection of Enforcement, NRC, to Jeffrey S. Lubbers, Dec. 10, 1986.

111 *See*, *e.g.*, *Leber v. Pa. Dept. of Environmental Resources*, 780 F.2d 372 (3d Cir.), *cert. denied*, 106 S.Ct. 3294 (1986).

112 The fact that a § 11(c) case must be brought by the government who harms employees by rendering inapplicable any statute of limitations. *See*, *e.g.*, *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260 (10th Cir. 1980).

113 The belief that nothing will be done to correct the problem a whistleblower discloses tends to discourage whistleblowing. Testimony of Sen. Charles E. Grassley, Tr. 12; MSPB, *Whistleblowing and the Federal Employee* 27-31 (1981), *cited in* Martin, *The Whistleblower Revisited*, 8 Geo. Mason L. Rev. 123 (1985).

114 47 Fed. Reg. 54585 (1982), *discussed in* *Kansas City Gas & Elec. Co. v. Brock*, 780 F2d 1505, 1509-10 (1th Cir. 1985), *cert. denied*, 92 L.Ed.2d 724 (1986). *See also* 29 C.F.R. § 24.4(a) (1986) (program agency to receive copy of all complaints).

115 GAP-TLPI Testimony at 10-11, *discussing* *Ryan v. Brock*, No. 86-4058 (2d Cir. 1986) (ordering DOL to reopen ERA case on basis of NRC report).

116 *See* 40 Fed. Reg. 26083 (1975), *reproduced in* OSHA Inst. Dis. 4A App. I, at I-2 (Aug. 25, 1985).

117 45 Fed. Reg. 6189 (1980).

118 Testimony of Stephen M. Kohn, Tr. 69-70.

119 *See generally* Letter from Anthony J. McMahon, Chief Counsel, Federal Highway Admin., to Marshall J. Breger, Chairman, Administrative Conference, Sept. 29, 1986.

120 In some instances, two remedial programs may work at cross purposes. For example, in *Thomas v. TVA*, No. SL07528610208 (MSPB May 9, 1986), an MSPB administrative law judge overturned the dismissal of a supervisor at a nuclear power plant who had been found by TVA to have discriminated against one of his supervisors. Although the supervisor had invoked the protection of the ERA, he did so after the statute of limitations had expired. TVA nonetheless took disciplinary action based on the

supervisor's allegations, and it was that action that the MSPB proceeding set aside.

121 *Cf*. N.Y. State-City Comm'n on Integrity in Government, *Report and Recommendations on Whistleblowing Protection in New York* 5 (Oct. 8, 1986) ("complainant should be entitled to be informed of the final disposition of his complaint").

122 Testimony of Stephen M. Kohn, Tr. 70.

123 Tr. 76.

124 *See generally* 5 U.S.C. §§ 555(b), 706(1)(1982) (agencies to conclude matters within reasonable time; reviewing courts empowered to compel agency action unreasonably withheld); *e.g.*, *Public Citizen v. Dep't of Health & Human Services*, 632 F. Supp. 220, 226 (D.D.C. 1986).

125 *See generally* Testimony of Anthony Z. Roisman, Tr. 76-83.

126 *See generally* Fidell, *Nuclear Whistleblowing Issues in 1985* (remarks at American Nuclear Society Annual Meeting, Nov. 12, 1985), at 6, *citing* *Lang v. Pacific Gas & Elec. Co.*, No. 60185 (San Luis Obispo Co., Cal., Super. Ct.), *on removal*, Civil No. 85-6191HLH (C.D. Cal.); *Hermann v. H.P. Foley Co.*, No. 59672 (San Luis Obispo Co., Cal., Super. Ct.), *on removal*, Civil No. 85-2246-RG (Bx) (C.D. Cal. May 20, 1985); *Stokes v. Bechtel Corp.*, Civil No. C-84-8038 (N.D. Cal.), and No. 830446 (San Francisco Co., Cal., Super. Ct.); *Parks v. Bechtel Corp.*, Civil No. C-84-8037-WHO (N.D. Cal.); *Raymond Kaiser Engineers v. Superior Court*, No. 8027975 (Cal. Dist. Ct. App. Aug. 23, 1984); *Berstler v. Hirsch*, Civil No. 83-6122 (E.D. Pa. July 10, 1983); *Atchison v. Brown & Root, Inc.*, No. 83-29889 (Harris Co., Tex., Dist. Ct.), *on removal*, Civil No. H85-3568 (S.D. Tex.). *Stokes* and *Parks* were remanded to the California courts. *Stokes v. Bechtel North American Power Corp.*, 614 F.Supp. 732, 735 n.1 (N.D. Cal. 1985).

127 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

128 *Anaya v. Hansen*, 781 F.2d 1, 7 & n.8 (1st Cir. 1986).

129 Before any recommendation is made with respect to the allocation of responsibility for judicial review, it is assumed that the Conference would secure the views of the Judicial Conference of the United States and the Federal Judicial Center.

Table 1. Private Sector Employee Protection Statutes
(Health & Safety)

Statute	Program Agency	Investigative Agency	Adjudicatory Agency	Statute of Limitations*	Judicial Review
AHERA	EPA	DOL	Dist Cts	90 days	N/A
CAA	EPA	WHD	OALJ	30 days	Ct Apps
CERCLA	EPA	WHD	OALJ	30 days	Dist Cts
DOD87	DOD	DOD	None in Act	None in Act	N/A
ERA	NRC	WHD	OALJ	30 days	Ct Apps
FMSHA	MSHA	MSHA	MSHRC	60 days	Ct Apps
FRSAA	DOT (FRA)	FRA	Nat'l R.R. Adjustment Bd	30 days	Dist Cts
ISCA	DOT (USCG)	DOL	Dist Cts	60 days	N/A
LMRA	NLRB	N/A	NLRB	6 mos	Ct Apps
MSAWPA	WHD	WHD	Dist Cts	180 days	N/A
NLRA	NLRB	NLRB (OGC)	NLRB	6 mos	Ct Apps
OSHA	OSHA	OSHA	Dist Cts	30 days	N/A
SDWA	EPA	WHD	OALJ	30 days	Ct Apps
SMCRA	DOI (OSMRE)	OSMRE	BLA	30 days	Dist Cts
STAA	DOT (FHWA)	OSHA	OALJ	180 days	Ct Apps
SWDA	EPA	WHD	OALJ	30 days	Ct Apps
TSCA	EPA	WHD	OALJ	30 days	Ct Apps
WPCA	EPA	WHD	OALJ	30 days	Ct Apps

* The limitation periods refer to the time for filing a complaint with the investigative agency, rather than for seeking judicial review.

Table 2. Public Sector Employee Protection Statutes
(Health & Safety)

Statute	Program Agency	Investigative Agency	Adjudicatory Agency	Statute of Limitations	Judicial Review
ASHDCA	EDUC	None in Act	None in Act	None in Act	N/A
AHERA	EPA	DOL	Dist Cts	90 days	N/A
CSRA	OPM	OSC	MSPB	20 days	Fed Cir
DOD84	DOD	DOD IG + Components	OASD(A)	None in Act or regs	Dist Cts
EO12196	All (less military)	DOL	Program Agencies	None	N/A

Table 3. Protected Conduct

Statute	Whistleblowing	Reasonable Belief	Refusal to Work	Reasonable Belief
AHERA	Covered	Silent	Not Covered	N/A
ASHDCA	Covered	Silent	Not Covered	N/A
CAA	Covered	Silent	Not Covered	N/A
CERCLA	Covered	Silent	Not Covered	N/A
CSRA	Covered	Required	Not Covered	N/A
DOD84	Covered	Required	Not Covered	N/A
DOD87	Covered	Silent	Not Covered	N/A
EO12196	Covered	Silent	Not Covered	N/A
ERA	Covered	Silent	Covered*	Required*
FLSA	Covered	Silent	Not Covered	N/A
FMSHA	Covered	Silent**	Covered	Required
FRSAA	Covered	Silent	Covered	Required

ISCA	Covered	Silent	Not Covered	N/A
LMRA	N/A	N/A	Covered	Required***
MSAWPA	Covered	Required (just cause)	Not Covered	N/A
NLRA****			Covered	Subjective good faith
OSHA	Covered	Silent	Covered (reg)	Required
SDWA	Covered	Silent	Not Covered	N/A
SMCRA	Covered	Silent	Not Covered	N/A
STAA	Covered	Silent	Covered	Required
SWDA	Covered	Silent	Not Covered	N/A
TSCA	Covered	Silent	Not Covered	N/A
WPCA	Covered	Silent	Not Covered	N/A

* By interpretation. *Pensyl v. Catalytic, Inc.*, No. 83- ERA-2 (SOL Jan. 13, 1984).

** Safety complaints are protected even if frivolous. *Munsey v. FMSHRC*, 595 F.2d 735, 742-43 (D.C. Cir. 1978).

*** Subjective good faith and objective reasonableness are required. *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974).

**** Concerted activities are protected under section 7 of the NLRA, but the circuits are split as to the application of this provision to individual workers' safety complaints. *See Ewing v. NLRB*, 768 F.2d 51 (2d Cir. 1985); *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir.), *cert. denied*, 106 S. Ct. 313 (1985); *NLRB v. Esco Elevators, Inc.*, 736 F.2d 295 (5th Cir. 1984). On remand from *Prill*, the Board ruled that individuals' complaints are not protected. *Meyers Industries, Inc.*, 281 NLRB No. 118 (Sept. 30, 1986), *pet. for review filed sub nom. Prill v. NLRB*, No. 86-1675 (D.C. Cir. Dec. 11, 1986).

Table 4. Protected Conduct--Protected Disclosures

Statute	
AHERA	". . . provided information relating to a potential violation of this title to any other person, including a State or the Federal Government"
ASHDCA	". . . brought to the attention of the public. . ."
CAA	Commencing EPA proceeding, testifying or assisting
CERCLA	Providing information to a state or federal government, filing proceeding, testifying
CSRA	Any disclosure not specifically prohibited by law
DOD84	Any disclosure not specifically prohibited by law
DOD87	Disclosure to a Member of Congress or an authorized official of DoD or the Department of Justice
EO12196	". . . for filing report. . ." (presumably with agency by which employee is employed)
ERA	Reporting to NRC (circuits divided on complaint to employer), or participating in proceedings
FMSHA	Complaint to MSHA, operator or union, instituting or testifying in proceeding
FRSAA.	Filing complaint, instituting proceeding, testifying
ISCA	Complaint to USCG
MSAWPA	Filing complaint, instituting proceeding, testifying
NLRA	Concerted activities
OSHA	Filing OSHA complaint, instituting proceeding, or testifying; construed to include complaints to other federal, state or local agencies, employers, unions or the media
SDWA	Commencing proceeding, testifying or assisting
SMCRA	Reporting to DOI, state regulatory authority, employer or his representative, or participating in adjudicatory or rulemaking proceedings
STAA	Filing complaint, instituting proceeding, testifying

SWDA	Filing or instituting proceeding or testifying
TSCA	Filing complaint, instituting proceeding, testifying
WPCA	Filing complaint, instituting proceeding, testifying

Table 5. Exhaustion of Employer Remedies

Statute	
AHERA	Not required
ASHDCA	Not required
CAA	Not required
CERCLA	Not required
CSRA	Not required
DOD84	Not required
DOD87	Not required
EO12196	Not required
ERA	Not required
FMSHA	Not required, but encouraged by MSHRC. *E.g.*, *Sec'y ex rel. Hogan & Ventura v. Emerald Mines Corp.*, 8 FMSHRC 1066 (1986), *quoting Sec'y ex rel. Dunmire & Estle v. Northern Coal Co.*, 4 FMSHRC 126, 133 (1982).
FRSAA	Apparently required (45 U.S.C. secs. 153, 441(c) (1982))
ISCA	Not required
MSAWPA	Not required
NLRA	Not required by statute. Refer to collective bargaining agreements
OSHA	DOL encourages use of alternative remedies (29 C.F.R. sec. 1977.18 (1986)); employee must attempt to obtain corrective action from employer in refusal-to-work cases (*Whirlpool Corp. v. Marshall*, 445 U.S.

	1, 10-11 (1980))
SDWA	Not required
SWCRA	Not required
STAA	Required for refusals-to-work. DOL encourages use of alternative remedies. 29 C.F.R. sec. 1978.112, 51 Fed. Reg. 42095 (1986).
SWDA	Not required
TSCA	Not required
WPCA	Not required

Table 6. Remedies

Statute	Exemplary Damages	Temporary Reinstatemen
AHERA	Statute silent	
ASHDCA	Statute silent	
CAA	Held to be unavailable by DOL	
CERCLA	Statute silent	
CSRA	Statute silent	
DOD84	Statute silent	
DOD87	Statute silent	
EO12196	EO silent	
ERA	Held to be unavailable by DOL	
FMSHA	Statute silent	Regulation provides for temporary reinstatement after preliminary hearing
FRSAA	Statute silent	
ISCA	Statute silent	
MSAWPA	Statute silent	
NLPA	Statute silent	

OSHA	Statute silent
SDWA	Exemplary damages authorized
SMCRA	Statute silent; possibly authorized by regulation (43 C.F.R. sec. 4.1204 (1986))
STAA	Statute silent *
SWDA	Held to be unavailable by DOL
TSCA	Exemplary damages authorized
WPCA	Held to be unavailable by DOL

* See Brock v. Roadway Express, Inc., No. 85-1530 (U.S. Apr. 22, 1987) (temporary reinstatement after preliminary hearing does not violate due process).

Table 7. Caseload, FY1985

Statute	Complaints Received	Complaints Found Meritorious	Cases Docketed by OALJ	Agency Hearings	Judicial Revi Commenced
AHERA	N/A	N/A	N/A	N/A	N/A
ASHDCA				N/A	
CAA			3	1	
CERCLA				0	
ERA			44	11	2
FMSHA	276*	97**		53	3
FRSAA	0	0		0	0
ISCA				N/A	
MSAWPA				N/A	
OSHA	2433	291		N/A	67***
SDWA			0	0	
SMCRA	1			0	1

STAA	248	20	6	4
SWDA		4	1	
TSCA		3	1	
WPCA		3	2	

* Of these, 102 complaints were docketed with FMSHRC.

** Decided by FMSHRC ALJs.

*** Cases sent to Solicitor of Labor for possible district court action. Perhaps half are pursued; some of those are settled.

Table 8. Whistleblower Case Chart

This chart was compiled from records available at the Office of Administrative Law Judges of the Department of Labor as of June 30, 1986. The left side of the chart indicates the disposition of each case. The following abbreviations apply:

Dism = dismissal
Sett/Withd = settlement or withdrawal of complaint
Untime = untimely filing of complaint
Disc Eq T = Discussion of equitable tolling of statute of limitations by ALJ
Grant Eq T = ALJ held statute to be equitably tolled
Judg Compl = judgment for employee
Reinstat = complainant ordered reinstated
Back Pay = back pay awarded ($ amount shown where revealed by record)
Atty Fees = attorneys fees awarded
Aff Relief = affirmative relief awarded
Misc Relief = miscellaneous relief ordered

Secretarial modifications of ALJ rulings are noted.

The right side of the chart shows the time elapsed for each phase of the case. The first column shows the number of days from the employer's action to the filing of the complaint. Succeeding columns indicate days elapsed between filing of the complaint and WHD's decision, ALJ hearing (if any), motion for summary disposition (if granted), ALJ decision, and secretarial decision. Where information was unavailable, a blank appears. Where a case was decided after hearing, but the hearing date is unknown, an "x" appears.

The final two columns show which cases were reviewed by the courts of appeals or enforced by the district courts.

Case No.	Dism.	Sett/Withd.	Un-time	Disc. Rq.T.	Grant Rq.T.	Judg. Compl.	Rein-stat.	Back Pay	Atty Fees	Aff. Relief	Misc Relief	Compl. filed	Wage&Hour Decision	Hearing	Motion for Summ. Disp	A.L.J. Decision	Sect.of L. Decision	Review by Ct. Apps.	Enforcement by Dist. C
84-CAA-1	x	x										-							
85-CAA-1	x												[illegible]^{10}		[illegible]	[illegible]			
85-CAA-2	x	x										-					-		
78-SDWA-1	x		x	x															
79-SDWA-1	x											29		[illegible]		21	240		
79-SDWA-2	x		x									100		[illegible]		[illegible]	332		
79-SDWA-2^{1}	x											5					-		
80-SDWA-1	x											16		[illegible]		[illegible]			
80-SDWA-2	x											42	[illegible]	[illegible]		[illegible]			
83-SDW-1	x											20		[illegible]		[illegible]	740		
81-SWDA-1						x	x	x	429.[illegible]					x					
85-SWD-1	x	x											[illegible]^{11}	[illegible]		[illegible]	200		
85-SWD-3	x																		
85-SWD-4	x											29	[illegible]		[illegible]	[illegible]			
79-TSCA-1	x^{2}		x	x								34		[illegible]		[illegible]	295	(SOL upheld)	
79-TSCA-1^{3}	x^{4}						x	x	x^{7}			11		[illegible]		[illegible]	358		
81-TSCA-1	x											8	[illegible]	x		[illegible]	174		
83-TSCA-1	x													[illegible]^{12}		[illegible]			
84-TSC-1	x														[illegible]	[illegible]			
84-TSC-2	x	x																	
85-TSC-3	x		x	x								443	[illegible]	[illegible]		[illegible]			
86-TSC-1	x	x																	
WPCA-2	x													x		[illegible]	630		
WPCA-3	x		x	x								395			x	[illegible]	1167		
80-WPCA-1						x	x	x			Cleared pers. file	[illegible]		[illegible]		[illegible]	375		
81-WPCA-1	x											[illegible]		[illegible]		[illegible]			
81-WPC-2	x	x												x					
83-WPC-1	x	x												x					
83-WPC-2						x	x	[illegible],771	9093.[illegible]		Cleared pers. file	23	[illegible]	[illegible]		[illegible]			
84-WPC-1	x											[illegible]		[illegible]		[illegible]			
84-WPC-2	x		x									109	[illegible]	[illegible]		[illegible]			
85-WPC-1	x	x																	
85-WPC-2	x													[illegible]^{13}		[illegible]			
85-WPC-3						x	x	x					[illegible]^{10}	[illegible]		[illegible]	[illegible]		
79-ERA-1						x	x	x	500.[illegible]		Cleared pers. file	5		[illegible]		[illegible]	[illegible]		

A10

Case No.	Dism.	Sett/ Withd.	Un-time	Disc Eq.T	Grant Eq.T	Judg. Compl.	Rein-stat.	Back Pay	Atty. Fees	Aff. Relief	Misc. Relief	Compl. filed	Wage&Hour Decision	Hearing	Motion for Summ. Disp.	A.L.J. Decision	Sect. of L. Decision	Review by Ct. Apps.	Enforcement by Dist. Ct.
79-ERA-3	x											15		211		241			
80-ERA-1	x											21		111		149	202		
80-ERA-2	x		x	x	x							32		59		95	140		
81-ERA-1						x	x	x	1,507.02		50,000 Reputation, etc[15]	30	59	x		119	175	x[20]	
81-ERA-2																			
81-ERA-3	(Decision not Found)																		
81-ERA-4	x													x		156[21]	184		
81-ERA-5	x											29	25	122		115	213	x	
81-ERA-6						x	x	x						73[22]		129	250		
81-ERA-7	x											21		x		253	5 yrs.		
81-ERA-8	x	x																	
81-ERA-9	x	x																	
82-ERA-1	x												9[23]	x		77			
82-ERA-2						x[16]						15[24]	[25]	120		209	531		
82-ERA-3						x	x	x			5,000 pain sufferring		90	72		100	267		
82-ERA-4	(See 83-ERA-4)					x	x	x				15	26	217		205			
82-ERA-5	x																		
82-ERA-6	x	x																	
82-ERA-7	x													x					
82-ERA-8	x												39[26]	76		100		x	
82-ERA-9						x	x[18]	x	,075.30		Clear Pers. File							x[27]	
82-ERA-10	x	x																	
82-ERA-11	x		x	x	x							64	30	277		99			
82-ERA-13	x	x																	
83-ERA-2	x[19]												[28]	x		99	489[29]		
83-ERA-3	x													40		60	2 1/2yrs.		
83-ERA-4	(Remedy for 82-ERA-4)						x	x	,400.00										
83-ERA-6	x	x																	
83-ERA-7	x											30		x		90	19mos.		
83-ERA-8	x	x																	
83-ERA-9	x											21	30	x		260	20mos.		
83-ERA-10	x	x																	
83-ERA-11	x	x																	
83-ERA-12						x	x	x	2[illegible],121.63	Post copy of order	Clear files	19	33	110		150		x	
84-ERA-1	x											27	25	110		605	312		

Case No.	Dism.	Sett./ Withd.	Un- time	Disc. Eq.T.	GrantJudg. Eq.T.Compl.	Rein- stat.	Back Pay	Atty. Fee	Aff. Relief	Misc. Relief	Compl. filed	Wage &Hour Decision	Hearing	Motion for Summ. Disp.	A. L. J. Decision	Sect.of L. Decision	Review by Ct. Apps	Enforcem by Dist.
84-ERA-2	x	x																
84-ERA-4	x												x					
84-ERA-5	x	x										282		336	416	2yrs. 2mos.		
84-ERA-6	x		x											125	255		x	
84-ERA-7	x	x																
84-ERA-8	x	x																
84-ERA-9	x																	
84-ERA-10	x										7			61	89			
84-ERA-11	x										7			61	90			
84-ERA-12	x										19			69	78			
84-ERA-13	(No decision available, only notice of hearing)										15			43	73			
84-ERA-14	x	x											x					
84-ERA-15	x[30]										25	40	152		267	19mos		
84-ERA-16	x	x																
84-ERA-17					x[31]	x		$ 6,500.00		4,217.99 Job search	10	30	62		110	448[35]		
84-ERA-18	x	x										29	106		213			
84-ERA-19	x	x																
84-ERA-20	x	x																
84-ERA-21	x	x																
84-ERA-22	x	x																
84-ERA-23	x																	
84-ERA-24	x										16	31	62		116	20mos.		
84-ERA-25	x	x																
84-ERA-26	x	x																
84-ERA-27	x		x	x[32]							16	30		397	433			
84-ERA-29	x	x																
84-ERA-30	x[33]												x					
84-ERA-31					x	x		x			28		100		361			
84-ERA-33	x	x																
84-ERA-35	x	x																
84-ERA-36	x																	
84-ERA-37	x	x																
85-ERA-1	x	x																
85-ERA-2[34]					x	x		$ 79,90[illegible].50		70,000 med.exp.	25	69	115		442	783		
85-ERA-3	x	x													312			

Case No.	Dism.	Sett./ Withd.	Un-timely	Disc. Eq.T.	Grant Eq.T.	Judg. Compl.	Rein-stat.	Back Pay	Atty. fees	Aff. Relief	Misc. Relief	Compl. filed	Wage&Hour Decision	Hearing	Motion for Summ. Disp.	A. L. J. Decision	Sect. of L. Decision	Revew by Ct.Apps.	Enforcement by Dist.Ct.
85-ERA-5	x	x																	
85-ERA-6	x[38]																		
85-ERA-7						x[39]	x		5,593.75	Post copy of order		14	17	[illegible]		41	247		
85-ERA-8	x	x																	
85-ERA-9	x		x[40]																
85-ERA-10	x	x																	
85-ERA-11	x	x																	
85-ERA-12	x	x																	
85-ERA-13	x		x												x				
85-ERA-14	x	x																	
85-ERA-15	x											15			65	[illegible]			
85-ERA-16	x											9		136		204			
85-ERA-18,26	x	x																	
85-ERA-19	x	x																	
85-ERA-23				x[41]									95	124		309			
85-ERA-24	x												50[48]	175		360	419		
85-ERA-25	x													107[47]		218	261		
85-ERA-33								$15,375.02	x			20	29	123		330			
85-ERA-34	x											27	55	77		319			
85-ERA-35,36	x		x									40	65	86		141			
85-ERA-38,39	x	x																	
85-ERA-40	x	x																	
85-ERA-41						x		5,654.15	x				65[49]	166		257			
86-ERA-2	x											9	49		x	191			
86-ERA-3	x	x																	
86-ERA-4	x											11	39	101		200			
86-ERA-8						x		1,414.10	x			10	37	99		191			
86-ERA-10	x	x																	
86-ERA-11	42													96[49]		216			
86-ERA-12	x[43]											28	20	66		[illegible]	193		
86-ERA-25	x[44]											28	31		x	219			
84-STA-1	x							[illegible],360.[illegible][45]				142[50]	[illegible][51]	207		360	370		
84-STA-2	x																		
84-STA-3	x	x																	
84-STA-4	x	x																	
84-STA-5	x	x																	

Case No.	Dism.	Sett./ Withd.	Un-time	Disc. Eq.T.	Grant Eq.T.	Judg. Compl	Rein-stat.	Back Pay	Atty. fees	Aff. Relief	Misc. Relief	Compl. filed	OSHA Decision	Hearing	Motion for Summ. Disp.	A. L. J. Decision	Sect. of L. Decision	Review by Ct. Apps.	Enforcement by Dist. Ct.
84-STA-6						x		961.5	6,674.37			16	84	115		187	270	x	
84-STA-7	x																		
84-STA-8	x																		
84-STA-9	x	x																	
84-STA-10	x											117	156	519		239			
84-STA-11	x																		
84-STA-12	x	x																	
84-STA-13a	x																		
84-STA-13b	x 52						x 93	,354				16	96	x 344		335	450		
84-STA-13c						x 55	x	4,350			Closed Pers. file			x					
84-STA-14	x	x																	
84-STA-15	x											22	65	201		219	139		
84-STA-16	x		x 54	x											x				
84-STA-18	x	x																	
84-STA-20	x		x	x								169	214	307		403	102		
85-STA-1	x	x																	
85-STA-2	x	x																	
85-STA-3						x		1,309.8	750.00		Cleared file			x					
85-STA-4	x		x	x								220	212		x	392	192		
85-STA-5	x	x																	
85-STA-6	x	x																	
85-STA-7	x	x																	
85-STA-8						x	x	x				71		50		288	135		
85-STA-9	x												142	470		601	144		
85-STA-10	x	x																	
85-STA-11	x											35	154	209		450			
85-STA-12	x	x											209		312	379			
85-STA-13	x											35	155	209		289	410		
85-STA-14	x											21	224	451		390			
85-STA-15	x	x										61	200	x		473			
86-STA-2	x																		
86-STA-4	x	x																	
86-STA-5						x	x	x	,049.84		Closed pers. file	61	60	333		321	134		
86-STA-9	x												215	222		383	194		
86-STA-10	x	x																	
86-STA-11	x	x																	

Notes to Table 8

1 Two acts of retaliation alleged. First held untimely, second without merit.

2 Reversal of ALJ by Secretary of Labor, who granted equitable tolling and found for complainant.

3 Two complaints filed.

4 Reversal of ALJ by Secretary of Labor, who granted equitable tolling and found for complainant.

5 Complainant had not been fired.

6 Same

7 Decision of Secretary of Labor.

8 Complainant had not been fired.

9 Waived by complainant.

10-14 Assumes complainant had filed 30 days after employer's action.

15 Loss to reputation and mental distress award limited by Secretary of Labor.

16 Reversal of ALJ by Secretary of Labor, who dismissed complaint.

17 Reversal of ALJ by Secretary of Labor on damages for pain and suffering.

18 Reversal of ALJ by Secretary of Labor on reinstatement.

19 Reversal of ALJ by Secretary of Labor; remanded and settled.

20 Secretary of Labore's decision affirmed in part, reversed in the part; damages allowed for pain and suffering.

21-23 See note 10.

24 Complaint refiled 19 months later.

25 See note 10.

26 See note 10.

27 Overturns Secretary of Labor and ALJ.

28 See note 10.

29 Remanded and settled.

30 Remanded by Secretary of Labor; dismissed again by ALJ.

31 Settled following remand on damages.

32 Assumes ALJ overturned on equitable tolling.

33 Secretary of Labor reversed ALJ, orders reinstatement and remands for backpay determination.

34 Pending.

35 Remanded by Secretary of Labor for premature closing of record.

36 Settled after ALJ decision.

37 Settled.

38 Settled after ALJ decision.

39 Settled before final order of the Secretary.

40 Complaint timely; request for hearing untimely.

41 Remanded by ALJ to WHD to determine whether violations occurred within 30 days of complaint.

42 Remanded by ALJ to WHD.

43 Remanded by Secretary of Labor.

44 ALJ decision reversed by Secretary of Labor.

45 Secretary of Labor decision.

46-49 See note 10.

50 For STAA cases, statute of limitations is 180 days.

51 For STAA cases, OSHA is investigative agency.

52 Secretary of Labor reversed decision of ALJ and ordered relief.

53 Secretary of Labor decision.

54 Secretary of Labor decision.

55 Secretary of Labor reversed ALJ and denied relief.

56 Complaint timely, request for hearing untimely.

Table 9. *Citations to Statutes and Regulations*

AHERA	Pub. L. No. 99-519, sec. 211, ___ Stat. ___
ASHDCA	11 U.S.C. sec. 525 (1982)
CAA	42 U.S.C. sec. 7622 (1982); 29 C.F.R. Pt. 24 (1986)
CERCLA	42 U.S.C. sec. 9610 (1982); 29 C.F.R. Pt. 24 (1986) (semble)
CSRA	5 U.S.C. sec. 2302(b)(8)(A) (1982); 5 C.F.R. Pts. 1252-53 (1986); 32 C.F.R. Pt. 145 (May 9, 1986) (DOD cooperation with OSC)
DOD84	10 U.S.C. sec. 1587 (Supp. III 1985); DOD Directive No. 1401.3 (July 19, 1985)
DOD87	Pub. L. No. 99-661, sec. 942, ___ Stat. ___, *adding* 10 U.S.C. sec. 2409
ERA	42 U.S.C. 5851 (1982); 10 C.F.R. sec. 50.7 (1986); 29 C.F.R. Pt. 14 (1986)
FMSHA	30 U.S.C. sec. 815(c) (1982); 29 C.F.R. Pt. 2700 (1986)
FRSAA	45 U.S.C. sec. 441 (1982)
ISCA	46 U.S.C. sec. 1506 (1982)
LMRA	29 U.S.C. sec. 143 (1982)
MSAWPA	29 U.S.C. sec. 1855(a) (1982); 29 C.F.R. sec. 500.9 (1986)
NLRA	29 U.S.C. sec. 158 (1982)
OSHA	29 U.S.C. sec. 660(c) (1982); 29 C.F.R. Pt. 1977 (1986)
SDWA	42 U.S.C. sec. 300j-9 (1982); 29 C.F.R. Pt. 24 (1986)
SMCRA	30 U.S.C. sec. 1293 (1982); 30 C.F.R. Pt. 865 (1986); 43 C.F.R. sec. 4.1200 (1986)

STAA	49 U.S.C. sec. 2305 (Supp. III 1985); 29 C.F.R. Pt. 1978, 51 Fed. Reg. 42091 (1986)
SWDA	42 U.S.C. sec. 6971 (1982); 29 C.F.R. Pt. 24 (1986)
TSCA	15 U.S.C. sec. 2622 (1982); 29 C.F.R. Pt. 24 (1986)
WPCA	33 U.S.C. sec. 1367 (1982); 29 C.F.R. Pt. 24 (1986)

Table 10. Abbreviations

AHERA	Asbestos Hazard Emergency Response Act of 1986
ASHDCA	Asbestos School Hazard Detection and Control Act of 1980
BLA	Board of Land Appeals
CAA	Clean Air Act
CBO	Congressional Budget Office
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
CSRA	Civil Service Reform Act of 1978
DOD	Department of Defense
DOD84	Department of Defense Authorization Act, 1984
DOD87	Department of Defense Authorization Act, 1987
DOI	Department of the Interior
DOL	Department of Labor
DOT	Department of Transportation
EDUC	Department of Education
EO12196	Occupational Safety and Health Programs for Federal Employees, 1980
EPA	Environmental Protection Agency
ERA	Energy Reorganization Act of 1974
FHWA	Federal Highway Administration
FMSHA	Federal Mine Safety and Health Act of 1977
FRA	Federal Railroad Administration
FRSAA	Federal Railroad Safety Authorization Act of 1980
GAO	General Accounting Office
IG	Inspector General
ISCA	International Safe Containers Act
LMRA	Labor Management Relations Act
MSAWPA	Migrant Seasonal and Agricultural Worker Protection Act
MSHA	Mine Safety and Health Administration
MSHRC	Mine Safety and Health Review Commission
MSPB	Merit Systems Protection Board

NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
OALJ	Office of Administrative Law Judges
OASD(A)	Office of the Assistant Secretary of Defense (Administration)
OGC	Office of General Counsel
OPM	Office of Personnel Management
OSC	Office of Special Counsel
OSHA	Williams-Steiger Occupational Safety and Health Act of 1970 (or Occupational Safety and Health Administration)
OSMRE	Office of Surface Mining Reclamation and Enforcement
OTA	Office of Technology Assessment
SDWA	Safe Drinking Water Act
SMCRA	Surface Mining Control and Reclamation Act of 1977
STAA	Surface Transportation Assistance Act of 1982
SWDA	Solid Waste Disposal Act
TSCA	Toxic Substances Control Act
USCG	U.S. Coast Guard
WHD	Wage and Hour Division
WPCA	Federal Water Pollution Control Act of 1972

Mr. MINETA. I would now like to call forward the Honorable Anthony J. Broderick, Associate Administrator for Aviation Standards of the Federal Aviation Administration.

Mr. Broderick, your testimony will be made a part of the record in its entirety, and you may proceed in any manner that you choose.

TESTIMONY OF HON. ANTHONY J. BRODERICK, ASSOCIATE ADMINISTRATOR FOR AVIATION STANDARDS, FEDERAL AVIATION ADMINISTRATION

Mr. BRODERICK. Mr. Chairman and members of the subcommittee, I appreciate having the opportunity to appear before you today to present the views of the Federal Aviation Administration concerning three bills pending before you that would offer whistleblower protection to aviation employees on safety matters.

We support the enactment of legislation to ensure that critical safety information is not suppressed. In that regard, we agree with the concept underlying all three bills before the subcommittee. We believe, however, that there are several criteria which should be met by any legislation in this area.

First, the coverage of employees should be broad enough to include airline employees as well as employees of manufacturers and repair stations.

Second, employees of the Federal Government should not be covered under the legislation.

Third, legislation should protect the reporting of safety infractions whether they are ongoing or have previously occurred.

Fourth, investigation and adjudication of complaints should be by the Secretary of Labor, not the Federal Aviation Administrator.

Fifth, the legislation should provide a balanced approach which guards against abuse of the process.

Let me elaborate briefly on these points.

We believe that the coverage should include airline, aviation manufacturer, and repair station employees. We do not believe that employees of one segment of the industry should be singled out for special coverage. The nature of the work performed at airlines, manufacturers, or repair stations could have significant safety repercussions for the traveling public. Critical safety information at any of these institutions should be available to the FAA for performance of its safety functions, and employees who provide that information to the Federal Aviation Administration when it is otherwise not disclosed by the organization should be protected from retribution.

We also believe that employees of the Federal Government should be expressly excluded from any legislation enacted. Federal employees already enjoy full whistleblower protection afforded by the Civil Service Reform Act of 1978, with the Office of Special Counsel and the Merit Systems Protection Board providing investigation and adjudication respectively.

From the Federal Aviation Administration's safety perspective, we are concerned both with prior and ongoing violations. Past violations should be corrected and punishment meted out, as appropriate. Information concerning ongoing violations clearly has important safety ramifications. Therefore we believe that the protection afforded by legislation should cover safety infractions in both categories.

All of the bills provide a mechanism for employees who believe they have been subjected to retribution by their employer for reporting safety violations to file a complaint with the Government. Two of the bills would have complaints filed with and resolved by the Secretary of Labor, whereas one calls upon the FAA Administrator to take such action. We firmly believe that this authority should reside with the Secretary of Labor rather than the Administrator. The investigations and adjudications are not matters of safety per se, but largely center around employment decisions and the reasons for those decisions. The Secretary of Labor is already responsible for such activities in other areas where employees are provided whistleblower protection; for example, in the occupational safety and health area.

We view the investigation and adjudication of cases as an important effort, but not one within the special expertise of the FAA. Moreover, we are concerned that requiring the performance of such a function by the FAA would divert critical FAA resources from their primary safety missions.

While we believe that providing protection to aviation employees for reporting safety violations is a worthwhile effort by the Congress, we also see the potential for the abuse of such a process if safeguards are not built into the legislation. We believe, for example, that it would not serve a legitimate public purpose for the investigative and adjudicatory process to be used merely as a device for barraging an employer with complaints during a labor dispute. This is not only unfair to an employer, but could thwart the ability to provide protection to deserving persons elsewhere in the industry.

For these reasons we believe that the approach found in H.R. 4023, which provides for costs to be assessed against a person who has filed a frivolous or bad faith complaint, is both appropriate and desirable. The inclusion of such a provision in our view would provide needed balance.

There are two other facets to the legislation which we believe the subcommittee should consider as part of its review of this issue. The first concerns whether an employee should be required to apprise his or her employer of a safety problem before being protected for reporting such information to persons outside the company. This kind of approach is used in H.R. 4113. We believe there may be value to instituting an approach which provides an initial opportunity for a company to correct a safety deficiency, since it is best positioned to do so. In any event, we believe this kind of approach merits consideration by the subcommittee. The second aspect concerns whether an employee who commits a deliberate safety violation should be covered by the legislation.

A review of the bills pending before the subcommittee indicates that none meets all of the criteria we believe are appropriate for inclusion within a bill. We would therefore recommend that the subcommittee consider merging the best features of each bill into a composite bill which addresses the issues we have outlined. We have not attempted to set out specifics on how the investigative and adjudicatory process should work, as this is more appropriately in the province of the Department of Labor; we would defer to their views on how best to administer this process.

In closing, Mr. Chairman, I would like to indicate again that we appreciate the opportunity to present our views on this important topic. I would also like to stress that the vast majority of airlines, manufacturers, and repair stations are committed fully to the advancement of safety. Nevertheless, there surely are some organizations where that same commitment to safety is not evidenced and where the safety of the traveling public argues for a process whereby safety information which may otherwise be suppressed can be brought to the FAA's attention to prevent the potential loss of life.

I am finished with my prepared statement Mr. Chairman. I would be pleased to answer any questions.

Mr. MINETA. Thank you very much, Mr. Broderick.

At this time we have a Call of the House so we will recess for a vote and reconvene in about 10 or 15 minutes.

[Recess.]

Mr. MINETA. The Subcommittee on Aviation will please come to order.

Mr. Broderick, is it your feeling that in the absence of a whistleblower law for aviation, that you are not getting useful safety information because employees are afraid of retaliation?

Mr. BRODERICK. No, Mr. Chairman. I think we do get a lot of safety information. It is apparent from testimony that you have received here and that which I am sure you will receive, that that flow of information would increase with this kind of protection.

Mr. MINETA. Would increase?

Mr. BRODERICK. Yes.

Mr. MINETA. Are you aware of instances in which employees have furnished useful information to FAA, and then the employees have been disciplined for talking to FAA?

Mr. BRODERICK. We heard here this morning, and I'm sure you'll hear more testimony this afternoon, of such instances. I couldn't attest to the specific facts in any case but I've been told that that has happened in the past.

Mr. MINETA. In your testimony you suggest that we consider whether an employee who commits a deliberate safety violation should be covered by whistleblower legislation. What are your thoughts on this question?

Mr. BRODERICK. I'm sorry, did you say "should" or "should not"?

Mr. MINETA. Well, you are suggesting in your testimony that employees who commit deliberate safety violations should be covered—should not be covered by whistleblower legislation.

Mr. BRODERICK. Yes. The problem that we're talking about is one of who is responsible for this action. Are we protecting an employee from himself or herself, or are we protecting the employee from the company? Let's cite an example that's purely hypothetical.

An employee has a bad labor-management problem with the company and commits a small but, in fact, technical infraction of the regulations, and then reports that to the FAA. He is then fired for other reasons. This is a difficult area. It has been discussed already this morning, and it's something that I think the subcommittee is going to have to think about when they are crafting the legislation. I don't have a very simple answer to that question. It gets to the heart of the motivation of the person in reporting and in committing the violation.

Mr. MINETA. Your testimony also raises the question of whether the legislation should require that to be protected by the whistleblower law, an employee must report a safety problem to his or her employer. Do you think this should be limited to a requirement of notifying the employer? Or should the employer be given an opportunity to correct the problem? And if so, how long a time would you give for the correction of the problem, and who would decide whether the resolution of that problem is satisfactory or not?

Mr. BRODERICK. Mr. Chairman, I'm afraid I don't have answers to all of those questions. I think that this is the other area that needs to be discussed. I think that some of the points that were raised by the witnesses this morning about the importance of reporting data to the employer and giving the employer a chance to correct what might be a misunderstanding or an oversight are quite valid. On the other hand, the question of whether or not such things should be done within 30 minutes is something that would seem to provide some difficulties. Certainly, it's not necessary to draft the specific language here, but I think that's an area that needs to be thought about and specifically considered and provided for.

Mr. MINETA. Have you come across any instances in which the FAA has been contacted about alleged safety violations by an employee acting in bad faith?

Mr. BRODERICK. I don't know of any, and I think that the most difficult part of the answer to that question is to know what someone's motives were. We certainly have gotten a lot of complaints from people just in the course of reviewing our daily mail, where those complaints were unfounded on technical grounds. The issues raised reflected a lack of understanding of the regulations or a lack of knowledge of the specific facts. As to, whether or not they knew that the regulations were improperly cited and the facts were improperly cited, I don't know.

I don't know of any complaints that were issued on bad faith. I do know of complaints that we've gotten that were not valid complaints, let me put it that way.

Mr. MINETA. The ATA is going to be testifying that this is not necessary because it is covered under collective bargaining legislation or agreements. On the other hand, the argument is also made that this may decrease the number of people who might be willing to report safety violations——

Mr. BRODERICK. It might decrease?

Mr. MINETA. It might decrease rather than increase the number of instances where personnel may be willing to report safety violations. Could you think of any circumstance where that might be?

Mr. BRODERICK. I really can't. As I understand all of these proposed bills, they would leave in place the existing mechanisms that we have—hotlines, contractual arrangements, etc.—and I can't see why this would decrease the flow of information. I can only see it providing for an improvement in that flow.

Mr. MINETA. Mr. Ballenger?

Mr. BALLENGER. Thank you, Mr. Chairman.

I'm sorry, Mr. Broderick, that I missed your presentation. We run around rather rapidly here.

In an earlier statement I mentioned the postcard campaign. If we had had the bill that we're speaking about in place, with the automatic protection, how do we prevent this employee protection program from becoming another basis for a labor-management argument. I mean, with the postcard arrangement that they had, which I guess automatically triggered your program of inspections—are we providing another problem that may come up in just standard labor-management relations?

Mr. BRODERICK. Mr. Ballenger, I don't think so. I think that you have to separate the so-called "postcard campaigns" from the whistleblower protection legislation. The whistleblower protection legislation, as I understand the bills that have been proposed, only becomes operative—if I could use that word—after someone has been discharged. It's a way of protecting against that. The postcard campaign or any other series of complaints that we get represents a series of complaints to the FAA that are investigated regardless of whether or not we have whistleblower protection. Most of them are allegations of safety problems; some of them are actually just used to support the company.

But be that as it may, the fact is that there are safety allegations made. We separate them, at least as much as we can, immediately to find out which appear to have some validity and which don't, and we investigate all complaints that we get regardless of the source and regardless of the motivation of the complainant in order to see if there is an underlying safety problem that ought to be corrected or a system problem that ought to be corrected. That's something completely different from protecting people for making that complaint in the first place.

Mr. BALLENGER. I was a manufacturer before I came here, and we had to build rather a long file of records before we were able to fire anybody, in self-protection because we'd end up in court.

Could airline employees not go to court to contest what they considered an improper firing? Could they not go to court as my employees could?

Mr. BRODERICK. The ATA would be better able to answer that. If I could rephrase your question, I think what you're asking is, does State law protect employees of airlines just as well as it protects others? And I honestly don't know. I'm not a labor law expert. I would assume that it does but I have no knowledge of that, sir.

Mr. BALLENGER. I'll save that question for later, then. Thank you.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Rowland?

Mr. ROWLAND. Thank you, Mr. Chairman.

There is an investigation going on now in the FAA of Texas Air. Are any protections being offered to those employees who are being interviewed now regarding safety violations?

Mr. BRODERICK. Protections, sir, that are similar to those sought in this legislation? Is that what you refer to?

Mr. ROWLAND. Not necessarily. Maybe, or maybe not.

Mr. BRODERICK. I don't know of any. The only thing I can tell you is that we can offer, and have on occasion offered, people the confidentiality, the anonymity, the protection from FAA prosecution, and working with the Justice Department, protection from criminal prosecution for infractions that they may be involved in. Those kinds of situations are uncommon and I don't know of any specifically underway right now. And, of course, we don't have authority to protect people from being discharged by their employers.

Mr. ROWLAND. So there could possibly be recriminations against employees providing information during the course of the FAA investigations from their employer?

Mr. BRODERICK. That's the case any time we do an investigation and any time we talk with an employee.

Mr. ROWLAND. Do you know if the unions provide any protections for them under these circumstances?

Mr. BRODERICK. I am told that some union contracts have such provisions, but I am not specifically aware of them.

Mr. ROWLAND. At Continental the employees are not now unionized, so you wouldn't really know whether there was any protection for those employees at all?

Mr. BRODERICK. That's correct.

Mr. ROWLAND. Thank you very much.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Petri?

Mr. PETRI. Thank you, Mr. Chairman.

I think I heard you say that this legislation, if passed, would create whistleblower protection for airline employees similar to that we have for Civil Service employees.

Mr. BRODERICK. Conceptually, yes. We do have whistleblower protection for Civil Service employees now, and this would extend that kind of thing to airline employees.

Mr. PETRI. One of the problem areas that people have identified with this is a fear, that employees might feel they haven't been doing a good job, or they might have a poor work record, or they might be disgruntled because they are passed over for promotion; and therefore might act out of malice or have a defense against disciplinary action by alleging that it was in retribution for whistleblowing, when in fact the whistleblowing was not good citizenship, it was good cover for that employee, or he hoped it would be. Does this happen in the Civil Service at all? Is this a legitimate fear, or in fact is this something that is as much an inflated concern as a real worry?

Mr. BRODERICK. I'm certainly not an expert on what happens in the Civil Service. I can tell you, though, that we did recognize that possibility. We would support some kind of language that talks about protection against frivolous claims and is specific with regard to payment of legal fees or what have you to protect the employer from those kinds of claims.

Mr. PETRI. In that connection, there is a related concern, about the confidentiality of the employee making a complaint. You do take their name down but it is not available, or it's supposed to be kept in confidence? It's not available under the Freedom of Information Act or anything of that sort? Is that correct?

Mr. BRODERICK. We do. And we also will accept a totally anonymous complaint where we literally do not know who is making the complaint and act upon it. That presents logistics difficulties, but we do work with those. Unfortunately as you have heard earlier, there is not a lot of confidence in the effectiveness of those systems.

Mr. **Petri**. But it's my impression that the FAA has an 800 hotline?

Mr. **Broderick**. Yes, sir.

Mr. **Petri**. Then people have to leave their name and number to——

Mr. **Broderick**. No, they don't have to leave their name and number. We would prefer that they do because it makes it easier. Normally these are complex technical issues and it makes it easier for us to be able to call back and follow up. But we have a hotline, the self-addressed postcard, and keep them anonymous. We will keep them confidential, and if in fact they insist on not even giving us their name and phone number, we will deal with them anonymously.

Mr. **Petri**. Then they'd have to call from a friend's house, I guess, because you use a recording and you ask that they leave their name and number so that you can call them back.

Mr. **Broderick**. Well, that's something that was referred to earlier. We only have a normal eight hour workday that the phones are manned in Washington headquarters, so there is a requirement that they call during those business hours.

Mr. **Petri**. Okay. Well, evidently sometimes during the workday the recording operates——

Mr. **Broderick**. Yes, if people are all on break or something, or in fact if the phones are all already tied up by people that they are talking with. There is a limited number of people that man the system.

Mr. **Petri**. But in this area of confidentiality it seemed to me there might be an answer to the concern that whistleblowers would abuse the whistleblowing process in order to get protection against disciplinary action. If it is to be kept confidential—the identity of the whistleblower—couldn't it be kept confidential all the way through so that they could not use or allege that they are being—do you see what I'm saying?

Mr. **Broderick**. Yes, I do, sir. I think the problem that you run into is that in the airline business we frequently run into a very, very specific fact situation that is being discussed, upon which the whistle is being blown, so to speak. And you only have a limited number of people who understand that, there are at least conclusions drawn from that. They may be wrong, but they are nevertheless drawn. And we can't stop that without this kind of legislation.

Mr. **Petri**. Very good.

Should we consider at all any kind of a reward system for people who bring forth complaints that turn out to be particularly meritorious? That is to say, turning it around the other way, rather than keeping it confidential, should we put a medal on someone and give them a prize?

Mr. **Broderick**. Well, in fact, I would hope that companies that are motivated to promote safety and efficiency do in fact do that kind of thing. I'm not sure that's appropriate in this kind of legislation, which is aimed more at protection of people.

Mr. **Petri**. Thank you.

Thank you, Mr. Chairman.

Mr. **Mineta**. Dr. Rowland, did you have a follow-up question?

Mr. **Rowland**. Yes, I did, Mr. Chairman.

You stated there are certain things that you can do at any investigation, but that you can't provide protection to employees. In general, would the inability to provide protection to employees impair the validity of your investigation? And if so, to what extent?

Mr. **Broderick**. I think that's a debatable issue. It's very difficult to prove that something has not happened; in fact, I guess it's logically impossible to do that, so I can't tell you that we have never had investigations impeded because of that. We know that from time to time it has been claimed after the fact that had we been able to grant immunity or grant protection we would have gotten information earlier, and that's why we support the general thrust of this.

I suspect, as I indicated in response to the Chairman's question earlier, that this will open up dialogue between the Federal Aviation Administration and employees and increase the flow of safety information. I can't see it hurting.

Mr. **Rowland**. But there would be some effect on the investigation vis-a-vis being able to get information on safety violations in this instance without any fear of recrimination against those you are interviewing?

Mr. **Broderick**. I would hope that passage of this kind of legislation would in fact make people more comfortable in these investigations with their own situations personally. That's generally what we hear as complaints from people.

Mr. **Rowland**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much, Mr. Broderick, for being here. I'm glad to see that your testimony got cleared by proper authorities. [Laughter.]

[The prepared statement of Mr. Broderick follows:]

STATEMENT OF ANTHONY J. BRODERICK, ASSOCIATE ADMINISTRATOR FOR AVIATION STANDARDS, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION, CONCERNING PENDING "WHISTLEBLOWER" LEGISLATION.

APRIL 27, 1988.

Mr. Chairman and Members of the Subcommittee:

I appreciate having the opportunity to appear before the Subcommittee today to present the views of the Federal Aviation Administration concerning three bills (H.R.3812, 4023, and 4113) pending before you that would offer "whistleblower" protection to aviation employees on safety matters.

We support the enactment of legislation to ensure that critical safety information is not suppressed. In that regard, we agree with the concept underlying all three bills before the Subcommittee.

We believe, however, that there are several criteria which should be met by any legislation in this area. First, the coverage of employees should be broad enough to include airline employees as well as employees of manufacturers and repair stations. Second, employees of the Federal Government should not be covered under the legislation. Third, legislation should protect the reporting of safety infractions whether they are ongoing or have previously occurred. Fourth, investigation and adjudication of complaints should be by the Secretary of Labor, not the Federal Aviation Administration. Fifth, the legislation should provide a balanced approach which guards against abuse of the process. Let me elaborate briefly on these points.

COVERAGE OF BILL

We believe that the coverage should include airline, aviation manufacturer, and repair station employees. We do not believe that employees of one segment of the industry should be singled out for special coverage. The nature of the work performed at airlines, manufacturers, or repair stations could have significant safety repercussions for the traveling public. Critical safety information at any of these institutions should be available to the FAA for performance of its safety functions, and employees who provide that information to the FAA when it is otherwise not disclosed by the organization should be protected from retribution.

We also believe that employees of the Federal Government should be expressly exluded from any legislation enacted. Federal employees already enjoy full whistleblower protection afforded by the Civil Service Reform Act of 1978, with the Office of Special Counsel and the MSPB providing investigation and adjudication, respectively.

NATURE OF INFRACTIONS REPORTED

From the FAA's safety perspective, we are concerned both with prior and ongoing safety violations. Past violations should be corrected and punishment meted out, as appropriate. Information concerning ongoing violations clearly has important safety ramifications. Therefore, we believe that the protection afforded by legislation should cover safety infractions in both categories.

INVESTIGATION AND ADJUDICATION OF COMPLAINTS

All of the bills provide a mechanism for employees, who believe they have been subjected to retribution by their employer for reporting safety violations, to file a complaint with the government. Two of the bills would have complaints filed with and resolved by the Secretary of Labor, whereas one calls upon the FAA Administrator to take such action. We firmly believe that this authority should reside with the Secretary of Labor rather than the Administrator. The investigations (and adjudications) are not of safety matters per se, but largely center around employment decisions and the reasons for those decisions. The Secretary of Labor is already responsible for such activities in other areas where employees are provided whistleblower protection (for example, in the occupational safety and health area).

We view the investigation and adjudication of cases as an important effort, but not one within the special expertise of the FAA. Moreover, we are concerned that requiring the performance of such a function by the FAA would divert critical FAA resources from their primary safety missions.

NEED FOR A BALANCED APPROACH

While we believe that providing protection to aviation employees for reporting safety violations is a worthwhile effort by the Congress, we also see the potential for the abuse of such a process if safeguards are not built into the legislation. We believe, for example, that it would not serve a legitimate public purpose for the investigative and adjudicatory process to be used merely as a device for barraging an employer with complaints during a labor dispute. This is not only unfair to an employer, but could thwart the ability to provide protection to deserving persons elsewhere in the industry.

For these reasons, we believe that the approach found in H.R. 4023, which provides for costs to be assessed against a person who has filed a frivolous or bad faith complaint, is both appropriate and desirable. The inclusion of such a provision, in our view, would provide needed balance.

OTHER CONSIDERATIONS

There are two other facets to the legislation, which we believe the Subcommittee should consider as part of its review of this issue. The first concerns whether an employee should be required to apprise his or her employer of a safety problem before being protected for reporting such information to persons outside the company. This kind of approach is used in H.R. 4113. We believe there may be value to instituting an approach which provides an initial opportunity for a company to correct a safety deficiency, since it is best positioned to do so. In any event, we believe this kind of approach merits consideration by the Subcommittee. The second aspect concerns whether an employee who commits a deliberate safety violation should be covered by the legislation.

* * * * * * *

A review of the bills pending before the Subcommittee indicates that none meets all of the criteria we believe are appropriate for inclusion within a bill. We would, therefore, recommend that the Subcommittee consider merging the best features of each bill into a composite bill which addresses the issues we have outlined. We have not attempted to set out specifics on how the investigative and adjudicatory process should work, as this is more appropriately in the province of the Department of Labor. We would defer to their views on how best to administer this process.

In closing, Mr. Chairman, I would like to again indicate that we appreciate the opportunity to present our views on this important topic. I would also like to stress that the vast majority of airlines, manufacturers, and repair stations are committed fully to the advancement of safety. Nevertheless, there surely are some organizations where that same commitment to safety is not evidenced, and where the safety of the traveling public argues for a process whereby safety information, which may otherwise be suppressed, can be brought to the FAA's attention to prevent the potential loss of life.

That completes my prepared statement, Mr. Chairman. I would be pleased to respond to questions you may have at this time.

JUN [illegible] 1988

U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

MAY 31 1988

The Honorable J. Roy Rowland
House of Representatives
Washington, DC 20515

Dear Dr. Rowland:

This is in response to your letter of April 28 pertaining to whistleblower legislation pending before the Subcommittee on Aviation.

Specifically, you have raised several issues concerning the Federal Aviation Administration's (FAA) approach to protecting from disclosure the identity of an airline employee who reports safety information to the FAA. I would be pleased to respond to those concerns.

Your first question is whether an FAA official can conduct an interview of an airline employee without a representative of carrier management being present. The answer is "yes." In fact, ramp inspections are generally held without advance notification of carrier management; during these inspections, if air carrier personnel are present, they are often interviewed by the FAA inspector. Most often, in view of the circumstances associated with the inspection, this is without the presence of a management representative. This has been the case in our ramp checks of Eastern Air Lines aircraft. Additionally, if an employee wishes to consult with the FAA in private, he could do so without the presence of management representatives.

You have also inquired as to our policies concerning preserving the confidentiality of an individual who has contacted us. Simply stated, if an individual requests confidentiality from the FAA, we will do our best to honor that request. As you have recognized, though, there are cases in which our efforts to correct a safety problem may readily lead to the source of the information. Moreover, there may be times as well when it is necessary to secure the testimony of the person reporting the problem to the FAA in order to address the safety issues raised.

FAA safety inspectors should do their best to protect an individual's identity from being disclosed to an employer when the individual requests confidentiality. I believe that, on a day-to-day basis, our inspectors do a good job of providing that protection. I would also add that it is my expectation that an inspector who does not honor a request for confidentiality, when there is not a clear need to disclose the information, should be counseled on that point.

As I am sure you understand, dealing with these issues can be difficult. Inspectors must often resolve them on a case-by-case basis to ensure a proper balancing of an airline employee's request for confidentiality with the need to take appropriate safety action. In view of the points you raise, however, I am sending a copy of your letter to our regional Flight Standards Divisions, along with my response to you, in order to reinforce with them my approach to, and concerns about, protecting confidentiality.

I appreciate your contacting me on this point and look forwarding to working with you in the future.

Sincerely,

Anthony J. Broderick

Anthony J. Broderick
Associate Administrator for
  Aviation Standards

Mr. **Mineta**. At this time I would like to call forward Ms. Susan Bianchi-Sand, President, Association of Flight Attendants; Star Hesse, Flight Attendant, Pan American World Airways; Margaret Brennan, President, Independent Union of Flight Attendants; Ms. Janna Harkrider, Health, Safety, and Legislative Chairperson, Union of Flight Attendants; and Ms. Joan Wages, Independent Federation of Flight Attendants. If all of you would come to the table, we will begin.

TESTIMONY OF SUSAN BIANCHI-SAND, PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS; MARGARET BRENNAN, PRESIDENT, INDEPENDENT UNION OF FLIGHT ATTENDANTS: STAR HESSE, FLIGHT ATTENDANT, PAN AMERICAN WORLD AIRWAYS: JANNA F. HARKRIDER, HEALTH, SAFETY, AND LEGISLATIVE CHAIRPERSON, UNION OF FLIGHT ATTENDANTS; AND JOAN WAGES, INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS, ACCOMPANIED BY DAVID ARONOFSKY, COUNSEL

Ms. **Bianchi-Sand**. Good afternoon, Mr. Chairman. I am Susan Bianchi-Sand, President of the Association of Flight Attendants, and I'm pleased to be speaking this morning on behalf of a coalition of flight attendant unions represented here at the witness table.

Thank you for this opportunity to appear before this distinguished subcommittee. No one has done more over the years to protect passenger safety than the members of this subcommittee and its chairman, Congressman Mineta, and it is an honor to be here.

I wish we were here today to tell you that whistleblower protection was not needed in the aviation industry; that there were no serious safety problems in aviation; that companies welcome safety criticism; and that they do not penalize employees who report safety problems to the Federal Aviation Administration. Unfortunately, if that was ever true of our great industry, it is no longer the case today.

Our industry is operating under intense competitive pressure, fueled by deregulation, which is leading to dangerous safety shortcuts. These shortcuts are chronicled in the tens of millions of dollars of FAA fines that the carriers have had to pay in the last five years, and in the grounding of unsafe aircraft by the FAA. They are chronicled in recent airworthiness directives over shoddy workmanship, and chronicled in the extensive deferral of safety items that need repair. They are chronicled in the intense pressures all employees feel to get planes up in the air, no matter how bad the weather or how many questions exist about the safety of the aircraft. And they are chronicled in avoidable crashes like the Air Florida disaster in Washington, D.C.

Do companies welcome constructive criticism from employees concerned about safety problems? Of course not. The companies already know about the shortcuts they are taking. Our unions routinely make suggestions for safety improvements at our carriers, and the answer all too often is, "What's the bottom line? How much is this going to cost?" Individual flight attendant reports of safety problems often go unheeded and those who take a stand, who delay a flight to get an overweight bag off, or to ask questions about a warning light on an emergency exit, may be called in for counseling by a supervisor.

Is it any wonder that airline unions and airline employees feel compelled sometimes to report safety hazards to the Federal Aviation Administration? No one likes to report their company to the FAA. This is an industry where your uniform identifies you and you identify with your uniform, where people do not work as pilots or flight attendants; they are pilots or flight attendants. But sometimes the only way to get a safety problem solved is to go to the FAA and hope that the FAA has enough inspectors to take a look at the problem. And once your conscience forces you to go to the FAA, once you have decided that your concerns about passenger safety outweigh your desire to make your own company look good, you are now entirely vulnerable to retaliation from the company. The company can fire you, and they have more incentive to do that now that FAA fines have gone from $1,000 to $10,000.

As Congressman Oberstar noted in introducing his bill on the House floor, the Federal courts have reluctantly concluded that there is nothing in the Federal Aviation Act to protect those who come forward with the truth about safety problems.

In setting up its purportedly confidential 800 number reporting system, the Federal Aviation Administration has implicitly acknowledged the safety benefits that can be achieved by encouraging fearful employees to come forward. But a confidential reporting system is not enough. Indeed, its very existence seems to confirm the worst fears of the employees about the need to keep quiet. And often, no matter how closely the identity of the caller is held, there will only be a small handful of persons who could know that an engine part was plastic instead of metal, that a major repair was not reported to the FAA, or that a narrow-body plane took off with a door inoperative. These people need legal protection, not promises from an agency that cannot help them if their company deduces their identity.

We need a strong whistleblower bill, a bill that protects employees when they report problems to Congress, the Federal Aviation Administration, the Safety Board, or any other agency they reasonably believe has jurisdiction over the problem. We need a bill that protects employees not just when they report a safety problem, but also when they take steps to ensure the safety of passengers, such as refusing to fly on an aircraft they think is unsafe. We need a bill that provides effective remedies, including back pay for fired employees. And we need a bill that has built-in timetables for the Government to take action.

Combining the best parts of all the bills before this committee would provide such legislation, and we want to thank Congressman Oberstar, Congressman Kleczka, Congresswoman Collins, and Congressmen Glickman and Molinari for submitting bills to protect whistleblowers.

Rather than comment in detail on these bills, we would just like to note a question we have about Congressman Glickman's bill insofar as it seems to require notification of the problem to the carrier, and an opportunity for the carrier to correct the problem within 30 minutes. In our view this might be a good protocol where an employee wants statutory protection for refusing to work, but the protocol simply doesn't logically fit most reporting situations. If I am a flight attendant and I discover in-flight that there are no required life vests, or that the oxygen system does not work, am I to report that to the company and forget about it if management promises to fix it? Clearly, the Government and the public have a right to know that the laws and regulations have been violated, and a report of these problems to the Federal Aviation Administration should be protected regardless of whether or not the company plans to fix the problem.

Finally, I would like to address the question of whether a whistleblower bill somehow involves the Government in labor disputes. Assume for the sake of argument that reports of safety problems to the Government increase during a labor dispute. Is that really a problem? Supposing a mechanic who would normally ignore the fact that the company is using plastic instead of metal parts goes to the trouble of reporting it because of a labor dispute. This benefits the public since the real problem is not that safety hazards are reported during labor disputes, but that they are not reported when there is no labor dispute. Fear may be one reason, and that is why whistleblower protection for aviation employees is an important idea.

In closing, we would again like to thank this committee for holding these hearings. I would like now to ask Margaret Brennan, President of the Independent Union of Flight Attendants, to speak.

Ms. BRENNAN. Thank you. I am Margaret Brennan, and the Independent Union of Flight Attendants represents flight attendants working on the PanAm shuttle, Pan American World Airways, and PanAm Express.

Today, if a flight attendant asked me, "Should I report an alleged safety violation to the FAA," I would have to answer, "Yes, I believe you have an obligation to do so; however, the company might fire you for it." I would also have to tell them that in the past the FAA has given the company information on flight attendants' reports which have directly led to the disciplining of those flight attendants. As my colleague Star Hesse will soon testify, many flight attendants simply will not report a safety violation to the FAA because they understand this has happened in the past. They will not take the chance of losing their jobs. Ms. Hesse knows; she was suspended for 30 days without pay for a phone call to the FAA and was threatened with termination should she call the FAA again in the future.

Most unionized work forces have an established grievance and arbitration procedure that can be used to retroactively overturn discipline. This does nothing to relieve the chilling effects that possible discipline has on reporting safety violations in the first place when they are happening. However, some airlines—mostly smaller ones—have no grievance procedure and no remedy available for flight attendant discipline. Where do those flight attendants go now?

We urge this subcommittee to support protections for airline employees who report safety violations. The safety of our members, and we believe the traveling public especially, demand it.

Thank you, and I'd like to ask Star Hesse, the PanAm flight attendant, to please give her statement.

Mr. **Mineta**. Ms. Hesse?

Ms. **Hesse**. My name is Star Hesse. I am a flight attendant with PanAm; I have been a flight attendant for 21 years.

In August of 1985 I called the FAA seeking help for a flight attendant who was being required by PanAm to operate an excessively long on-duty period. The company had already been approached to allow the flight attendant to cancel from this flight, and the company had denied the request. In addition, they had read a company policy to the flight attendant saying that if she or anyone else on the flight canceled, they would be subject to discipline up to and including termination.

The flight attendant had operated from London to Detroit and was being required by PanAm to continue on to Chicago. Because of delays encountered in London and in Detroit, the on-duty period involved here eventually exceeded 19 hours on duty. The flight attendant stated that although she felt too fatigued to properly carry out her safety duties if she were forced to continue on this flight, she was also afraid to cancel from the flight because PanAm had recently started firing flight attendants when they attempted to leave flights when they were faced with excessively long duty periods.

I told this flight attendant that under existing FAA regulations a flight attendant had an obligation to remove himself or herself from the flight status when they felt too fatigued to carry out their primary duties of assuring passenger and operating safety. I told her—I tried to put her in touch with a local FAA inspector in Detroit so that she could express her concerns to him or her and perhaps have an on-the-spot assessment of the situation.

The FAA had recently published an FAA Safety Hotline which I attempted to call and did reach, but I only reached a recorded announcement saying that the office was closed, and if they would leave a message. This didn't help us as the woman was being faced with a somewhat imminent situation of a problem.

As it was approximately 4:15 p.m. in New York, where I was calling from, I tried a local FAA office number that I had, and I was given to an FAA officer, a Mr. Bumpus, Inspector Bumpus. He identified himself as the FAA representative assigned to Pan American. I related the problem that this flight attendant had to Mr. Bumpus and asked for the number of a Detroit FAA inspector. Mr. Bumpus was not very interested in the flight attendant's problem and kept telling me that I should not have called the FAA, and that I should have contacted the Chief Pilot's Office of PanAm as that was the proper channel for my inquiry.

I explained that PanAm had already been informed and had denied our request for this flight attendant to cancel, and that PanAm was also refusing to allow the flight attendant to leave the flight. In any event, this was a flight attendant that was involved in this problem; therefore, the Chief Pilot really had nothing to do with the situation.

Mr. Bumpus then took my name and, somewhat reluctantly, gave me the number of an FAA inspector who was on duty in Detroit. I relayed that information to the flight attendant in Detroit to use at her discretion, and advised her that this person from the FAA was available if she chose to call him.

Approximately 30 minutes after I spoke with Mr. Bumpus I received a phone call from my immediate supervisor at Pan American. She informed me that I was being suspended for having contacted the FAA. I received a 30-day suspension and a warning that any future failing in this area would lead to additional discipline, up to and including termination.

The matter of my suspension was resolved later through the grievance procedure. It is my belief that I was suspended not only to punish me for having contacted an agency outside of PanAm, specifically the FAA, but also to act as a warning and as a deterrent to other flight attendants who might consider contacting the FAA on safety or other related matters.

In this the company was quite successful because I had to inform other flight attendants who called for information that although it was their right to go to the FAA with safety-related matters, the company could and probably would discipline them, up to and including terminating them for exercising this right.

Thank you.

Mr. **Mineta**. Ms. Harkrider?

Ms. **Harkrider**. Thank you, Mr. Mineta. Again, we thank you very much for having these hearings. This is not my favorite thing to do in life, but I think it's extremely important.

If it is acceptable to you, sir, I know that you have a written copy of my statement. If possible I would like to move into a couple of incidents that are very recent, within the last week or two, that——

Mr. **Mineta**. I'm sorry—I'm not sure that I have your statement, Ms. Harkrider. Oh, I'm sorry; here it is.

Ms. **Harkrider**. Is that acceptable, sir?

Mr. **Mineta**. Yes, of course.

Ms. **Harkrider**. First of all, I would like to address a statement to Mr. Rowland of Georgia if I might. Continental does have one union on the property, and it's the Union of Flight Attendants. We are the legal bargaining agent for the flight attendants at Continental. We have been there through thick and thin, so we're not completely non-union.

One of the things I wanted to discuss today was an incident that occurred on April 17th in which a Continental 747 aborted takeoff on the runway at Los Angeles and went back to the gate. After a lengthy maintenance delay they took off again and flew about two hours over Denver, approximately; turned around and shut the number three engine down and landed in Los Angeles again. And again, another maintenance delay. The flight attendants had checked in approximately at 7:30 in the morning and it was coming on to 6:00 o'clock in the evening, and they were running out of duty time as agreed by the company, that it would be 14 hours for scheduled and 16 hours for irregular operations. So the company was aware of this.

First, they tried to bribe the flight attendants financially to get back on board the aircraft. The flight attendants said they were exhausted; they had already experienced one rejected takeoff, which is fairly unnerving not only to the passengers but also to the crew members; and then an engine shut-down, and they wanted to go home. So then the company agreed that they would replace them with another crew that was coming into town.

At 7:00 o'clock they were still on the ground and one flight attendant was experiencing flu symptoms and did go to the company doctor. They were very concerned about the number of crew members on board the aircraft. They waited until the Honolulu crew arrived, and four of the members got on the airplane; and then eight of these flight attendants got off of the airplane. One of the passengers had gotten off and called the press; it turns out he was a New York labor attorney, not ours—he called the press, and he was pretty upset, especially hearing the agents threatening to terminate the flight attendants if they walked off of the airplane. The flight attendants did get off and they were on this Channel 2 film that night at 11:00 o'clock. All of those flight attendants were terminated.

They were ordered back on the aircraft, which they did, and they deadheaded on to Newark that night and worked the trip back the next day. Out of the 14 flight attendants on the 747, two received no discipline; three received the second step of discipline, pay protected; one was terminated pending further investigation; and eight are terminated.

The company at first had one argument, and then when it came down to the hearing, with the termination of these people, they were arguing an FAR. They were arguing 121.391, which states how many crew members must be on board an aircraft at originating, terminating, and intermediate stops.

This is not going to be a problem at the grievance, but this is just one of the many problems we have at this airline, with people being afraid to do anything. They are so intimidated. I was fired in 1986; it took me a year to get my job back. I am personally convinced that my termination had nothing to do with why they said they fired me. I was speaking on flight attendant concerns as a union representative. The company finally said, "You were fired because you didn't get permission to say this from the Division Head or from Publicity."

That year, I had issued the FAA Hotline to many flight attendants; I had encouraged them to use it; I had explained how to use it and how to be effective with it. I had testified before the Department of Transportation on the handicapped. I had been very active with the membership that year. In addition to that, I had my phone tapped. From the time that we found the tap on the telephone until the time I was terminated was two weeks.

This is very frightening and unnecessary for anyone to go through.

Another situation I want to bring to your attention today, and you will be the first to hear about this. This flight attendant wanted to come today, but in order to protect her as much as possible we agreed that I would tell her story. I have all the documentation for this, and some of it is still forthcoming from the company. We have requested certain items from the company.

This flight attendant has been very concerned about something that she saw in the arming of a narrow-bodied aircraft. I'm not sure if you're all familiar with a girt bar, but it's the bar that comes out of the slide and fits into the sprockets at the floor, so that when the door is open the slide falls out, and on many aircraft there is a handle that you must pull to inflate the slide. Well, the way the slide had been folded on this aircraft, the inflation handle had been folded inside the slide and was now trapped under the girt bar. This very responsible flight attendant has gone to her supervisor; she has gone to the Vice President of Flight Operations, Dick Hillman; she has called the Principal Operating Inspector for the FAA in Houston; she has called training. Training came out and took photographs of this. Everyone agrees with her. The pilots say, "You're right. We need to change the training procedures to make people aware of this potential problem and hazard." And nothing has been done.

When the flight attendant called—it was extremely timely; she called last week and said, "I want to go public with this. What do I do now? I can't stand it if one of these MD-80s crashes or something. It's going to be on my conscience because I'm aware of this problem and I've done everything I know how to do." And I said, "I know you have. You have called me about this three times in the last year." What I told her was, "I can't help you unless you send me the documentation," because in my job I must be responsible, as well.

So she said, "I have no money in the bank. I've been working since 1962, and I'm willing to get fired over this."

People shouldn't have to go to those lengths. The FAA and the NTSB will hear a lot of safety concerns from a lot of crew members if they would just give them the opportunity. I know that a lot of people are concerned that Eastern Airlines has been hurt on the block quite a bit in the last year or two, and they wonder what happened to Continental. Well, many people at Continental gave up; we've been fighting this battle since 1978 and 1983. We have been through it and many of the people have simply given up. They know they will get fired if they talk about safety. They know that they will be labeled as having a bad attitude if they persist, and these people simply disappear. And the pilots—which, Mr. Rowland, are non-union, and so are the mechanics—they just disappear.

If I was the traveling public, which I do travel, too, on full-fare tickets now, I want to know that the pilot can shut that airplane down at the end of the runway without fear of losing his job.

So I think that will end my statement for now, and I will be happy to answer questions or clarify any other points. I did include Mr. Dave Bitonti's, statement from the accident investigation from Continental's crash on November 15th, 1987, at the NTSB hearings on March 11, 1988, for the simple reason that it kind of shows the attitude of what happens. Mr. Bitonti and I have talked, and he said, "Call me. Don't go through the hotline. The hotline is not always open. Just call me and I'll take care of it." And then in his statement he says that he has maybe had one call from a flight attendant, that he has not taken any action on crew members' calls to his office, and that he meets with the company biweekly to discuss these problems if he deems that there's any validity to them.

I have also included a copy of an interoffice memorandum. I think that that will suffice for now.

Thank you for your time.

Mr. MINETA. Thank you very much, Ms. Harkrider.

Ms. Wages, before we continue, we have a Call of the House for another vote, so we will go vote and come back.

[Recess.]

Mr. MINETA. The Subcommittee on Aviation will please come back to order. At this time we are pleased to hear from Ms. Joan Wages from the Independent Federation of Flight Attendants.

Ms. WAGES. Mr. Chairman, may I say for the record that David Aronofsky, Counsel to IFFA, is here and will be seated at the table for any questions?

Mr. MINETA. Fine.

Ms. WAGES. Mr. Chairman, on behalf of the TWA flight attendants, IFFA appreciates this opportunity to testify today in favor of such important legislation. We strongly support it and would urge immediate passage.

Employees hired by some carriers understand from the first day that the carrier and its management neither encourage nor support the reporting of safety violations. An atmosphere of intimidation exists that discourages all but the most courageous employees from taking any active role in safety promotion.

One particular incident at TWA resulting in disciplinary action against a flight attendant who came forward through IFFA to report an FAA violation illustrates the need for this legislation. A TWA flight departed Boston in a Boeing 747-100 aircraft with eight flight attendants despite the fact that the aircraft configuration required nine under applicable FAA regulations. Prior to departure, the flight attendant alerted a supervisor but the number was not changed. It was then brought to the captain's attention, but the flight still left with only eight flight attendants.

The flight attendant then came to IFFA, which in turn reported the incident to the FAA. TWA management response to the IFFA representative regarding the FAA report before it was filed is self-explanatory.

The General Manager to the IFFA representative: "It is to neither your nor my benefit to report this to the FAA."

IFFA representative: "We are required to report this to the FAA."

General Manager: "They will just be checking our flight attendants for flashlights and EPH's"—that stands for Emergency Procedures Handbook—"and the flight attendants will get into trouble if they don't have them."

IFFA representative: "We need to be monitored more closely by the FAA."

Only after IFFA notified the FAA of the violation was the disciplinary letter against the flight attendant who came forward issued. TWA clearly singled out this complaining flight attendant for punishment in retaliation for whistleblowing.

TWA policy states, "It is the company's policy to staff flights with FAA minimum crew requirements. The responsibility to ensure that this policy is followed lies with many people." Needless to say, this employee was fully exonerated when the case was arbitrated two years later; nonetheless, TWA's disciplinary action had a severe chilling effect on the rest of the work force with regard to reporting safety problems.

The above-mentioned incident occurred before the March, 1986 flight attendant strike, when the atmosphere was hardly conducive to reporting safety violations. The strike itself, which could only be described as hostile, has made this atmosphere even less conducive now.

A number of recalled flight attendants have been fired over incidents far less serious than any which might potentially embarrass the company by reporting safety violations. You may have seen the recent "60 Minutes" program which told the story of a 53-year-old recalled TWA flight attendant, an active IFFA member with 25 years of seniority and a flawless work record, who was fired for taking four small cartons of milk from an airplane. She had been on duty in excess of 10 hours after flying all night long to arrive in Paris, unable to take time to eat a meal or even sit down for five minutes. The milk itself was required to have been thrown away after the crew disembarked because of certain health requirements.

Other retaliations have occurred for similarly "serious infractions." When these cases reach arbitration one to two years later, the employees are exonerated with full back pay. But what happens in the meantime? Those who care about their jobs and want to assure they keep them simply cannot consider reporting a safety violation to the responsible Government agency. This is why we need a whistleblower bill.

Inherent in any whistleblower bill is the assumption that the FAA will welcome a report of a safety violation. Accordingly, there must be a conducive atmosphere for a report to be made. The TWA flight attendants have found such an atmosphere to be absent.

One other aspect of the whistleblower issue warrants mention. IFFA has personal experience with FAA inspectors who treat TWA flight attendant safety complaints as part of the TWA "labor problem." When flight attendants try to bring safety complaints, TWA's principal FAA operation inspectors respond by insisting that the flight attendants "report it to the company." The adverse effect of such a response on the willingness of employees to report safety problems is obvious: the problems go unreported.

You should note that during the IFFA strike at least a dozen TWA employees other than flight attendants, including two in management, came to IFFA to report documentable safety violations because they were afraid to go to the FAA. When IFFA tried to report the violations on an anonymity basis, the FAA insisted that the names be provided without much assurance that they would be maintained in confidence. If the employees consented, IFFA provided such names, but otherwise the violations went unreported. The FAA inspectors took the attitude that this was just a labor problem and could have cared less about the complaints.

Airlines simply must be prohibited from retaliating against an employee who reports a safety violation. In addition, the FAA must take these complaints seriously. They should provide a means for reporting these violations through around-the-clock hotlines, maintaining anonymity of those reporting, and respect for the validity of the report until proven otherwise.

A carrier operating in accordance with FAA regulations has nothing to fear in a whistleblower bill.

Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much, Ms. Wages.

Let me ask, Susan, could you or other members of the panel comment on the extent to which collective bargaining agreements protect employees who give safety information to the Government or refuse to operate in an unsafe condition? Do the collective bargaining agreements require that the employee act in good faith, or that the employee have a reasonable basis for believing that there is an unsafe condition?

Ms. **Wages**. I think I could respond to that.

In the case in question here, the flight attendant, the action was thrown out because of arbitration. As a result of our strike, TWA tried to eliminate our grievance procedure. We have had that reinstated through the courts, but had we not been successful through the courts there would have been no arbitration and the flight attendant would have been disciplined.

Mr. **Mineta**. Incidentally, on the case involving four milk cartons, that would not be the kind of situation that would be afforded protection under the whistleblower bill.

Ms. **Wages**. No. We understand that, Congressman Mineta. The point in bringing that up is that there is such an atmosphere of intimidation—if a flight attendant is going to be fired for taking four milk cartons, the rest of the workforce can be assured of being fired if they report a safety violation.

Mr. **Mineta**. But I assume that that's because that person is a 25-year flight attendant, and they would rather have that person off the payroll and be able to replace that person with a B-scale, new flight attendant.

Ms. **Wages**. That could be assumed, yes, sir.

Ms. **Bianchi-Sand**. Each contract, Mr. Chairman, is different, of course, in its provisions. There is no one here to speak for the nonunion airline employees who don't have any protection at all, but most of our contracts do of course implicitly provide that we can refuse to take a flight due to health or safety reasons—although a lot of them do not specifically address the question of reporting violations. We would vigorously oppose any discipline against an employee for reporting a legitimate safety violation.

But I think it's also important to note that you can be fired for a series of reasons, up to and including making the company look bad or refusing to comply with a direct order. So oftentimes the grievance procedure becomes more complicated than just the issue of whether a report was safety-related or not. This type of protection would speak to that unique infraction or violation, and we need that protection.

Mr. **Mineta**. Ms. Hesse, you state in your testimony that your 30-day suspension by Pan Am was resolved through the grievance procedure. Did the grievance procedure conclude that your suspension was improper?

Ms. **Hesse**. The grievance procedure was actually part of an ongoing settlement of a number of grievances, and I believe that the company simply agreed to withdraw. There was no admission on their part as to culpability or lack thereof of my actions with the FAA as part of the settlement. It was just withdrawn.

Mr. **Mineta**. Ms. Harkrider, you include in your testimony a memorandum from Continental's management stating that employees are prohibited from making public statements which are adverse to the business interests of the company.

Do you know whether this policy or other policies of Continental are interpreted to ban any unauthorized employee contact with FAA? And I raise the question because a statement to FAA might not be considered to be a public statement.

Ms. HARKRIDER. I understand what you're asking. In my opinion, as well as that of the Union of Flight Attendants and other employees I have spoken with, that is included and they do not want the FAA to know—they really want to keep every safety problem, all kinds of problems, any problem, internal. In the case of flight attendants they simply do not even want them discussing safety-related items with each other or with other employees or with the FAA or the NTSB. They simply think you should go get on the airplane and make the best of it.

Mr. MINETA. I don't recall the exact nature of the incident, but as I recall it involved Eastern Airlines in which two flight attendants refused to fly until the plane was deiced?

Ms. HARKRIDER. That's correct. There were four of them, I believe.

Mr. MINETA. Four? Was there disciplinary action taken on any of the four, or all four?

Ms. HARKRIDER. Yes, they did receive disciplinary action, but I would not be qualified to answer on that issue. The single carrier hasn't come up yet. Possibly you might direct that question to Mr. Luby.

Mr. MINETA. It has been suggested that whistleblower legislation should require that to be protected, an employee must be acting in good faith or have a reasonable basis to believe that there is a safety violation. I'm wondering if you would comment on whether this is desirable.

Ms. Brennan?

Ms. BRENNAN. Are you saying that that wording is desirable?

Mr. MINETA. That's right, whether or not we should include that in the legislation.

Ms. BRENNAN. I think it should be. That would be my opinion. We're not looking to open the floodgates for any kind of allegation or frivolous charges or anything. I think that's reasonable.

Mr. MINETA. Mr. Aronofsky?

Mr. ARONOFSKY. Congressman, if I could respond, the way you phrased the question it would appear to be unobjectionable. I think that legally speaking the problem might come in as far as the flight attendants were concerned if we were to adopt the Kleczka provision of penalizing, through whistleblower legislation, complaints which were not found to meet that particular standard.

For one thing—and I'd like to respond to several of the questions that have come up during the course of the hearing so far in that particular issue—I think the subcommittee should be aware that existing law already imposes a very strong penalty on any employee who files a baseless—that is frivolous, or factually bad faith—type of complaint through a defamation suit.

It's too bad Mr. Sundquist isn't here, because he could personally testify that any comment, including that made by a Member of Congress—at least as far as one Appellate Court is concerned—

which is not well grounded in fact or based on a sincere belief that what's being stated is accurate, is subject to defamation. It's not protected under the First Amendment or any union agreement if it's not valid to start with. And the fact of the matter is that any employee or group of employees who file a baseless complaint can be sued for substantial damages. I think that operates as a sort of a chilling effect against the type of frivolous or bad faith complaints.

I think the fact that a dozen whistleblower laws are already on the statutes, as you heard earlier this morning, and not one of them addresses the Kleczka approach or advocates the Kleczka approach, pretty well speaks for itself. It would be deemed to be chilling of the types of safety complaints if you went a step further and actually penalized that type of complaint in the statute itself. But again, returning to the way you phrased the question——

Mr. MINETA. It's not being formulated to penalize. It's trying to keep an even playing field, so to speak.

Mr. ARONOFSKY. But don't you have that now, Mr. Chairman? Wouldn't you have that now? You already have it in the dozen whistleblower schemes that are on the books, apparently, since it hasn't been identified by anyone so far in any of these other schemes as an area of abuse. On the contrary, they seem to be working.

I would add that the employee has got a heck of a lot more to lose by filing a frivolous or baseless complaint even without a defamation suit because the employee doesn't get the job back. And I would suggest, Mr. Chairman, that that result is far more onerous on an equitable scale than the few thousand dollars, at the most, that a carrier might have to pay if they choose to retain outside counsel to participate in a whistleblower hearing.

Mr. MINETA. Counsel shows me a chart where a couple of them require that, the Civil Service Reform Act and the DOD Authorization Act for fiscal year 1984. It required "reasonable belief" in terms of protected conduct.

Mr. ARONOFSKY. And I think as Mr. Fidell testified, all of the whistleblower schemes on the book at present are enforced that way by the administrative law judge. I found it interesting that the Surface Transportation Plan, at least on the limited statistics so far, indicates that roughly 62 or 63 percent of the complaints were found to be without legal merit. Those folks quite simply didn't keep their jobs or get them back.

Mr MINETA. Let me ask the panel, do you have any views on whether it would be more desirable for FAA to handle the cases, or the Department of Labor?

Ms. BIANCHI-SAND. We would probably lean toward the Department of Labor, although we're comfortable with both agencies.

Mr. MINETA. Any other thoughts on that?

Ms. BIANCHI-SAND. Mr. Chairman, if I could comment on the good faith question. At the risk of making a paid political announcement for unions, I think that we take safety very seriously and we would make every effort to ensure that if any employee registers a safety complaint, it will be on the grounds of a good faith effort to inform the proper agency of what they believe is a real violation.

Let me also add that there is reason for confusion out there. There may be more complaints registered than actual FAR violations because people may believe that they are identifying a problem that is a violation of the FAR's and it's really just a violation of company procedure. I think that is likely to happen, and in good faith they would be notifying the FAA.

Mr. MINETA. I think the problem here is that it's just such a subjective test in terms of what's good faith and what's a safety violation, whatever. And yet I recognize that something has to be done in order to give a modicum of protection for people to be able to feel free to report violations.

Again we have a Call of the House for a vote, so I am going to respond to that call and be back in about 15 minutes. As there are no further questions, I will go ahead and excuse all of you. Thank you very much.

[Recess.]

[The prepared statements of Mesdames Bianchi-Sand, Brennan, Harkrider, and Wages follow:]

BEFORE THE HOUSE AVIATION SUBCOMMITTEE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

AVIATION WHISTLEBLOWER PROTECTION

TESTIMONY OF SUSAN BIANCHI-SAND, PRESIDENT
ASSOCIATION OF FLIGHT ATTENDANTS
ON BEHALF OF THE
ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS
TRANSPORT WORKERS UNION, LOCAL 553
INDEPENDENT UNION OF FLIGHT ATTENDANTS
INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS
UNION OF FLIGHT ATTENDANTS
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AVIATION DIVISION AND
ASSOCIATION OF FLIGHT ATTENDANTS

APRIL 27, 1988

Thank you for this opportunity to appear before this distinguished subcommittee. No one has done more over the years to protect passenger safety than the members of this subcommittee and its chairman Congressman Mineta and it is an honor to be here.

I wish we were here today to tell you that whistleblower protection was not needed in the aviation industry; that there were no serious safety problems in aviation; that companies welcome safety criticism; and that they do not penalize employees who report safety problems to the Federal Aviation Administration. Unfortunately, if that was ever true of our great industry, it is no longer the case today.

Our industry is operating under intense competitive pressure, fueled by deregulation, which is leading to dangerous safety shortcuts. These shortcuts are chronicled in the tens of millions of dollars of FAA fines that the carriers have had to pay in the last five years, and in the grounding of unsafe aircraft by the FAA. They are chronicled in recent airworthiness directives over shoddy workmanship, and chronicled in the extensive deferral of safety items that need repair. They are chronicled in the intense pressures all employees feel to get planes up in the air, no matter how bad the weather, or how many questions exist about the safety of the aircraft. And they are chronicled in avoidable crashes like the Air Florida disaster in Washington, DC.

Do companies welcome constructive criticism from employees concerned about safety problems? Of course not. The companies already know about the shortcuts they are taking. Our unions routinely make suggestions for safety improvements at our carriers, and the answer all too often is: "What's the bottom line?" "How much is this going to cost?" Individual flight attendant reports of safety problems often go unheeded and those who take a stand, who delay a flight to get an overweight bag off, or to ask questions about a warning light on an emergency exit, may be called in for counseling by a supervisor.

Is it any wonder that airline unions and airline employees feel compelled sometimes to report safety hazards to the FAA? No one likes to report their company to the FAA. This is an industry where your uniform identifies you and you identify with your uniform, where people do not work as pilots or flight attendants they are pilots or flight attendants. But sometimes the only way to get a safety problem solved is to go the the FAA, and hope that the FAA has enough inspectors to take a look at the problem. And once your conscience forces you to go to the FAA, once you have decided that your concerns about passenger safety outweigh your desire to make your own company look good, you are now entirely vulnerable to retaliation from the company. The company can fire you, and they have more incentive to do that now that FAA fines have gone from one thousand to ten thousand dollars. As Congressman Oberstar noted in introducing his bill on the House floor, the Federal Courts have reluctantly concluded that there is nothing in the Federal Aviation Act to protect those who come forward with the truth about safety problems.

In setting up its purportedly confidential "800" number reporting system, the Federal Aviation Administration has implicitly acknowledged the safety benefits that can be achieved by encouraging fearful employees to come forward. But a confidential reporting system is not enough. Indeed, its very existence seems to confirm the worst fears of the employees about the need to keep quiet. And often, no matter how closely the identity of the caller is held, there will only be a small handful of persons who could know that an engine part was plastic instead of metal, that a major repair was not reported to the FAA, or that a narrow-body plane took off with a door inoperative. These people need legal protection, not promises from an agency that can not help them if the company deduces their identity.

We need a strong whistleblower bill. A bill that protects employees when they report problems to Congress, the FAA, the Safety Board or any other agency they reasonably believe has jurisdiction over the problem. We need a bill that protects employees not just when they report a safety problem, but also when they take steps to ensure the safety of passengers, such as refusing to fly on an aircraft they think is unsafe. We need a bill that provides effective remedies, including back-pay for fired employees. And we need a bill that has built in timetables for the government to take action, so that a pro-industry Administration cannot simply sit on its hands.

Combining the best parts of all the bills before this committee would provide such legislation, and we want to thank Congressman Oberstar (H.R. 3812); Congressman Kleczka and Congresswoman Collins (H.R. 4203); and Congressmen Glickman and Molinari (H.R. 4113) for submitting bills to protect whistleblowers.

Rather than comment in detail on these bills, we would just like to note a question we have about Congressman Glickman's bill insofar as it seems to require notification of the problem to the carrier, and an opportunity for the carrier to correct the problem within thirty minutes. In our view this might be a good protocol where an employee wants statutory protection for refusing to work, but the protocol simply does not logically fit most reporting situations. If I am a flight attendant and I discover in-flight that there are no required life vests, or that the oxygen system does not work, am I to report that to the company and forget about it if management promises to fix it? Clearly, the government and the public have a right to know that the laws and regulations have been violated, and a report of these problems to the FAA should be protected regardless of whether the company plans to fix the problem.

Finally, I would like to address the question of whether a whistleblower bill somehow involves the government in labor disputes. Assume for the sake of argument that reports of safety problems to the government increase during a labor dispute. Is that really a problem? Supposing a mechanic who would normally ignore the fact that the company is using plastic instead of metal parts goes to the trouble of reporting it because of a labor dispute. This benefits the public since the real problem is not that safety hazards are reported in labor disputes, but that they are not reported when there is no labor dispute. Fear may be one reason, and that is why whisteblower protection for aviation employees is an important idea.

In closing, we would again like to thank this committee for holding these hearings. I would now like to introduce some colleagues who will report their own first-hand experiences concerning company retaliation for reporting safety problems.

TESTIMONY OF BRIAN MOREAU

(Margaret Brennan)

My name is Brian Moreau. I am the Vice President of the Independent Union of Flight Attendants, representing the Flight Attendants who fly for Pan American World Airways, Pan Am Shuttle and Pan Am Express. As part of my duties, I oversee the Union's Health and Safety operations.

Today, if a Flight Attendant asked me, "Should I report an alleged safety violation to the F.A.A.", I would have to answer, "Yes, I believe you have an obligation to do so. However, the Company may fire you for doing so." I would also have to tell them that in the past, the F.A.A. has given the Company information on Flight Attendants' reports to the F.A.A. which have directly led to the disciplining of Flight Attendants. As my colleague Star Hesse will soon testify, many Flight Attendants simply will not report a safety violation to the F.A.A. They will not take the chance of losing their jobs. Ms. Hesse knows -- she was suspended for 30 days without pay for a phone call to the F.A.A., and was threatened with termination should she call the F.A.A. again. Most unionized work forces have an established grievance and arbitration procedure that can be used to retroactively overturn discipline. This does nothing to relieve the chilling effects that possible discipline has on reporting safety violations. However, some airlines, mostly smaller ones, have no grievance procedure and no remedy available for Flight Attendant discipline.

We urge this Subcommittee to support protections for airline employees who report safety violations. The safety of our members and the traveling public demand it.

TESTIMONY - AUGUST 1985

Call to the F.A.A. Supervisors.

My name is Star Hesse and I have been a Flight Attendant with Pan American for 21 years. In August of 1985 I called the F.A.A. seeking help for a Flight Attendant who was being required by Pan American to operate an excessively long on-duty period. The Company had already been approached to allow the Flight Attendant to cancel, and had denied the request.

The Flight Attendant had operated a flight from London to Detroit and was being required by Pan American to make an unscheduled continuation of that flight to Chicago. The on-duty period involved exceeded 19 hours. The Flight Attendant stated that although she felt too fatigued to properly carry out her safety duties if she were forced to continue on, she was also afraid to cancel from the flight because Pan American had recently started firing Flight Attendants who attempted to leave flight with excessive hours on-duty.

I told her that under existing F.A.A. regulations Flight Attendants had an obligation to remove themselves from flight status when they felt too fatigued to carry out their primary duties of assuring passenger and operating safety. I told her I'd try to put her in touch with the F.A.A. I then called an F.A.A. "Safety Hotline" number but reached only a taped message, as it was approximately 4:15 p.m. local New

York time. I tried the number of the local New York F.A.A. District Office. I was given to an offer of the F.A.A., a Mr. Bumpus. He identified himself as the F.A.A. Representative assigned to Pan American. I related the problem to Mr. Bumpus and asked for the number of a Detroit F.A.A. Inspector. Mr. Bumpus was not very interested in the Flight Attendant's problem and kept telling me that I should not have called the F.A.A., but I should contact the Chief Pilot's Office at Pan American as that was the proper channel for my inquiry. I explained that Pan American had already been informed and was refusing to allow the Flight Attendant to cancel, and that in any event this was a Flight Attendant, not a pilot issue and therefore the chief pilot had nothing to do with its resolution. Mr. Bumpus then took my name and somewhat reluctantly gave the number of an F.A.A. Inspector on duty in Detroit. I relayed that information to the Flight Attendant in Detroit and thought that the matter had ended.

Within a half an hour of my call to the F.A.A. I was contacted by my immediate supervisor at Pan American. She informed me that I was being suspended for having contacted the F.A.A. I received a thirty day suspension and a warning that any future "failing" in this area could lead to additional discipline. The matter of my suspension was resolved later through the grievance procedure. It is my belief that I was suspended not only to punish me for having called the F.A.A., but also to act as a warning and a deterrent to other

Flight Attendants who might consider contacting the F.A.A. on safety or other related matters.

In this, the Company was quite successful because I had to inform other Flight Attendants who called for information that although it was their right to go to the F.A.A. with safety related matters, the Company could and probably would discipline them up to and including terminating them for exercising that right.

TESTIMONY BEFORE THE SUBCOMMITTEE ON AVIATION UNITED STATES HOUSE OF REPRESENTATIVES

IN SUPPORT OF LEGISLATION TO PROTECT AVIATION INDUSTRY EMPLOYEES WHO DISCLOSE SAFETY INFORMATION

BY

Janna F. Harkrider
Health, Safety & Legislative Chairperson
Union of Flight Attendants
(Continental Airlines Representative)
1420 East North Belt, Suite 100
Houston, Texas 77032
(713) 499-1663 (703) 276-7066

April 27, 1988

Mr. Chairman and Distinguished Subcommittee Members.

My name is Janna Harkrider. I am the Health, Safety and Legislative Chairperson for the Union of Flight Attendants representing Continental Airlines Flight Attendants. I wish to take this opportunity to thank the Committee for holding hearings on this most important issue.

The Union of Flight Attendants unequivocally supports legislation that would protect employees of the aviation industry against discipline or termination for reporting safety or health problems within the aviation industry. We believe the Flight Attendants at Continental Airlines are particularly well-suited to discuss the need for such protections, since we have first hand experience at being victimized by the very practices this legislation attempts to curb.

We believe thousands of airline employees would report about unsafe situations that endanger lives but they are afraid to do so for fear of being fired. We have attached a Continental Airlines Interoffice Communication that clearly illustrates not only the consequences of such reports, but also portrays the attitude of management which we think is not in the interest of safety. While in an ideal world we would agree that the Company should be the first to be advised of a safety concern, we must recognize that the Company is in the business of running an airline and is certainly aware of safety regulations. Consequently, when there is a violation of a Federal Regulation that may endanger the lives of both passengers and crewmembers, it should be reported immediately to the proper authorities without fear of reprisal.

Since 1983, the number of Flight Attendants at Continental Airlines has risen from 2,000 to nearly 7,000. It now includes Continental, Texas International, Peoples Express, Frontier, New York Air and soon may be expanded to take in those from Eastern Airlines. Texas Air Corporation denies that any problems exist. The F.A.A. has generally denied there are problems but the Flight Attendants see the problems of passenger complaints, lack of maintenance, delays, cancellations and the absence of standardized training procedures. The Flight Attendants are frustrated. If they persist in pursuing a safety or health issue with the Company, they are labeled as having a bad attitude.

The F.A.A. has not been much better. I have included, for your reference, a copy of our Principal Operating Inspector's (POI) testimony at the public hearings in Denver, Colorado, March 1988, illustrating his attitude and actions where Flight Attendants are concerned. I have highlighted the significant portions of his testimony. In addition, the F.A.A. HOT-LINE continues to require the caller to leave a name and number. We urge you to consider a completely anonymous reporting system that would operate 24 hours a day as a necessary component of any whistle blower protection program.

In 1986, I was fired for providing a statement to the Denver Post regarding health and safety issues of concern to all Flight Attendants. I spoke as a Union representative about issues which we had tried repeatedly without success to work with the Company on. It took over a year to get my job back. Continental agreed, they did not fire me for what I said but that I had violated the Company work rules (enclosed). For the Company to terminate the Health and Safety Chairperson sent a very clear message to others. If I had not been speaking as a UFA representative, I may not have had a favorable decision for reinstatement.

You should all be aware that with the current F.A.A. and Department of Transportation inspection of the Texas Air carriers, Flight Attendants are in an especially precarious safety reporting position. Our Flight Attendants are literally unable to speak to the F.A.A. inspectors themselves because management is always present during these inspections.

The F.A.A., Congress, and the traveling public have no idea about the kind or magnitude of the existing safety problems in the aviation industry. The problems will only be revealed when there is protection provided for employees otherwise willing to act.

DJ6025

12/3/87

CONTINENTAL AIRLINES

Interoffice Communication

Human Resources

November 24, 1987

To: All Employees

From: John Adams

While we recognize that any large, complex and geographically dispersed operation has problems that must be addressed, it is important to deal with those problems appropriately. Safety is our single most important priority. If and when any employee has a concern, criticism or item needing attention with regard to the safety of any facet of our operation, such concern should be immediately brought to the attention of his/her supervisor for prompt investigation and/or corrective action. If there is no action or response from a supervisor, then each employee has an obligation to continue up the chain of command to the Chief Operating Officer. Continental has both an open door policy and an open invitation for constructive input. No employee has ever been disciplined for calling to the attention of the Company any actual or potential safety problem.

Any public disclosure of such concern without referral to the Company for action constitutes negligence, irresponsibility and a compromise to a safe operation. Such behavior by a Continental employee will not be tolerated and is in violation of the Continental General Rules of Employment Number 20 which states that "Public statements or displays by employees which are adverse to the business interests of the Company are prohibited."

JBA/mb

MR. RODRIQUEZ: No, sir, I was simply trying to get a thumbnail sketch of the enforcment activity involved with the carrier against which I can measure others.

CHAIRMAN NALL: If some of those were dropped or disposed of without action, I think it would be fair to put that in context in the record at this point or how they were disposed of?

BY MR. RODRIQUEZ:

Q I thought these were completed?

A Yes, these were completed but as I said, any of those four actions could have taken place or could have been a no action. I believe on the 14, and I can get the run for you, I think they were all completed with at least an administrative action or a fine.

Q Do you have direct involvement in the flight attendant training?

A I am responsible for it and I have not been able to directly physically observe flight attendant training over the year I have been the POI.

Q Is there a flight attendant program manager?

A No. We are attempting to get a cabin safety specialist assigned to our office in order to have someone that conducts surveillance of that on a full-time basis.

Q Do you mean as a principal operations inspector working on your staff or in the FISDO?

A In the FISDO.

Q Is this an FAA-wide program or something you're trying to do at Houston?

A It's been established at Los Angeles and Oakland, they have cabin safety inspectors now. I believe there's one in one other office, I think Kansas City or St. Louis. We're trying to get one established now.

Q Why isn't there one already in place, are there reasons you're aware of?

A I have no idea, sir.

Q What form has the request taken up to this point?

A Standard personnel action form within the FAA, SF52, submitted to our personnel office.

Q Do you have any information at all in the locations like Los Angeles, the size of the job that particular specialist would be facing there as compared with the Houston requirements?

A I would think the specialist, if that position were established in Houston, would have a tremendous job, simply because of the numbers of flight attendants and the training involved as opposed to perhaps Los

Angeles or Oakland where there is not as much training going on.

Q In other words, there would be less flight attendants being observed in the Los Angeles area than there would be in the Houston area, in ball park figures?

A My guess would be there would be less.

Q What is your assessment of the dispatcher staff at Continental, primarily in numbers?

A You mean as to the adequacy of the numbers?

Q Yes, sir?

A They appear to be adequate to me. We have not conducted an indepth inspection of the dispatcher section. That's one of the next agenda items.

Q Have you received any direct complaints or comments from the working staff of either the flight attendants or dispatchers at Houston about numbers or that sort of thing?

A No, sir.

Q Have you had any complaints or input directly from employees of Continental from the pilot group?

A In regard to what?

Q Anything they would like to call your attention to?

getting off the aircraft and making a walkaround or are there other ways he can assure the aircraft's free of snow and ice?

A Were I the pilot in command, I would either get off and go look at it or take it back to the gate and have it deiced if that were the case, if I were unsure.

Q I'm saying having just gone through the deicing as we do here in Denver or at the gates at other airports, and you're assured by a maintenance clearance, an A&P maintenance man has inspected the aircraft, you're given the signal, can that be a way of satisfying the captain that his aircraft is free of ice and snow?

A It's again up to the pilot in command. If he wants to trust that man's signal,that's fine, but the ultimate responsibility lies on him.

MR. DOUGHTY: No questions.

MR. BRAWNER: No questions.

EXAMINATION BY MS. HARKRIDER:

Q I have a question about crew member calls that come into your office in Houston, both pilots and flight attendants. What do you do with those calls?

A It depends on how much information we can elicit from the caller. There are a lot of times when we'll get a call, the caller chooses to remain anonymous for whatever reason, and I respect that. Unless we can get an incident or an alleged safety problem and tie it down with a flight, a date and specifics, then we can't go to the company and investigate the thing. Even on the anonymous ones, Mr. Crabtree, the Senior Director of Safety, he and I converse freely on these things and he checks them out and sees if there is an validity based on what information we have to go on.

Q Do you discuss those with the company on your weekly meetings?

A Yes, if there's one of significance. I have an agenda and we bring them up in our biweekly meetings.

Q If crew members call your office with safety complaints, how much of a problem or is it a problem with maintaining anonymity for that crew member?

A There's no problem from my aspect, however, say the safety problem would result in a violation of the regulations, then we would put together an enforcement package and when it would go to legal staff at Regional Headquarters, anonymous calls or tips do not fly as evidence. So the case is worthless unless we have names or somebody to refer to.

Q If a crew member called the FAA Hotline in Washington, is that guaranteed anonymity?

A I believe they are guaranteed anonymity if they wish.

Q As a follow up that report is sent to your office in Houston?

A Yes.

Q But that is done anonymously?

A Yes, and what it does is it requires an inspector from our office to go and dig to try and come up with these documents to show that there was in fact a violation of safety or FARs.

Q Do you think if there is reasonable cause, people acting responsibly, do you feel crew members should be able to call your regional office anonymously and still have action taken?

A Personally I think that would be acceptable, however, mechanically and legally I'm not sure we would be able to do that.

Q You stated earlier that you personally have not gone through any of the flight attendant training at Continental?

A Not since I've been the POI. When I was an air carrier inspector, I did attend flight attendant training classes. I did attend hands-on training, emergency drills evacuating the actual airplane.

Q How many attendants were in that class?

A I would say 25 or 35, I really don't know. It's been a number of years.

Q What do you think is the optimum number of flight attendants in a training class?

A I'm not an educator; I don't really know what an optimum size class would be. There would be a lot of factors involved, the size of the facility, the amount of instructors available, the amount of training aides and devices available. I don't think we could quantify. I couldn't quantify a specific number.

Q If there was a cabin safety specialist in Houston, they would be able to Judge that a little better?

A Perhaps. The main function of a cabin safety specialist is if they were assigned in Houston would be to insure that the carrier was complying with the regulatory requirements and as an offshoot of that the effectiveness of the training performed.

Q Referencing the IOE flight attendants are required to take, can you tell me how many hours the regulation says flight attendants are required to have on each aircraft type?

A No.

Q For the record, it is five hours.

CHAIRMAN NALL: As his opinion as to the adequacy of that.

THE WITNESS: I don't have any problem with the adequacy of the five hours.

BY MS. HARKRIDER:

Q Are you aware a waiver or exemption has been issued to Continental on those hours of IOE?

A No, I'm not.

Q Are you aware of any other waivers or exemptions being issued by the FAA for the Continental training programs?

A No, I'm not.

CHAIRMAN NALL: How about the CCC would that be considered a waiver?

THE WITNESS: No, sir, that's locally generated, it's not regulatory in nature. There is one exemption I am aware of, what was flight engineer training exemption 2095I which is 4901, that is in effect in Continental training. Other than that, I know of no exemptions or waivers.

BY MS. HARKRIDER:

Q Also for the record would you quickly go over what you do to okay any training programs at Continental?

A All the Continental training programs for dispatchers, flight attendants and pilots are contained in the flight operations training manual, used to be the flight crew training manual. When a revision to that is proposed by Continental, it's sent to me, I review it for completeness, correctness and compliance with the regulations and then I subsequently either approve or disapprove it.

Q Have you approved any training for an evacuation of unusual attitudes of aircraft?

A The answer to the question is no, there's no specific training for an evacuation in unusual attitudes. However, Continental does have a cabin trainer that can assume some unusual attitudes by tilting the trainer around. They do this in their initial training. Obviously it can't go inverted but it does have tilt axis, can be tilted in several different directions.

Q Do you know if that ability is utilized in the training program as part of the approval?

A When I was observing it as an air carrier inspector, yes, it was. I cannot speak in the last year and a half because I have not observed that training.

Q When you approve these training programs, do you --

CHAIRMAN NALL: Have you approved any programs since you've been there -- reviewed, actually approved or modified any changes in the program for flight attendant training since you've been the POI?

THE WITNESS: Yes, sir.

BY MS. HARKRIDER:

Q Would it be within your realm of your responsibility to approve and insist that unusual attitude training be performed at every recurrent training and every initial training class?

A I have no regulatory basis for doing that.

Q Explain a little bit about what regulations apply to flight attendant training and what is required to be included in that training?

A In a nutshell, when a flight attendant comes onboard, they're required to go through a basic indoctrination course, just as pilots do. They're required to do security training under FAR 108, emergency training under 121.417 and hands-on emergency training opening the doors and hatches, during their initial training.

Q In the emergency training, there's a prescribed list of articles and pieces of emergency equipment that must be handled in certain prescriptions that must be fulfilled before it can be certified. Do you know with the IOE requirements, are there any prescriptions that must be fulfilled on IOE?

A What do you mean by prescriptions?

Q When a flight attendant is taking their IOE, is there any prescribed routine that they must complete in order to have completed that IOE?

A I don't know, they may have a syllabus as the IOE line check airmen may have that they go through. I do not know.

Q There is no regulation?

A Not to my knowledge, no.

Q Is that the case for security and hijacking?

A Security is classroom training, 8 hours of initial training, classroom only.

Q But there's no prescribed recommendations from the FAA on what the content should be?

A Not to my knowledge. There is a principal security inspector for Continental Airlines. That is really his ballywick. I come under 121 and he does the FAR 108 portion of that.

MS. HARKRIDER: Thank you.

BY CHAIRMAN NALL:

Q You indicated earlier the nature of some of the questions you get anonymously or otherwise and most of those you said deal with flight dutytime. Can you categorize the general nature of inquiries you receive from flight attendants?

A It's been so long -- I can only recall one call that I ever got from a flight attendant personally. It's been so long that I can't remember the nature of it.

Q Assume you do get a call from a flight attendant who has a complaint that you consider to be at least an allegation of a safety item, what are you required to document in your files to show what you have done as an investigation to verify or discredit that particular call. Is it done orally by phone or is something in a record made of it?

A We have a complaint system worked out in the office where we have a tracking. When a complaint comes in, I have one of my assistants who is in charge of all those. He's given the deal, it's assigned a number, within the office, entered into our WPMS work program management system for tracking and he dogs until the resolution. Either there is an allegation proven in which case it is closed out as a complaint and it's opened as an enforcement action. If there's nothing substantive there, then it's closed out with a complaint or documentation thereof.

CHAIRMAN NALL: Mr. DelGandio?

- If you cannot report for work as scheduled, report your absence in the prescribed manner as far in advance of your scheduled starting time as possible. Two consecutive days of absence without notifying the Company will be grounds for termination of employment.

- Observe and abide by Company security, traffic and parking regulations.

- Observe and abide by safety practices and regulations, including smoking restrictions.

- Use only machines or equipment to which you are assigned or are authorized to operate.

- Horseplay, scuffling, fighting or commiting any act of violence on Company premises is prohibited.

- Using threatening or abusive language or intimidating, coercing or interfering with other employees or their work is prohibited.

- Any negligent action resulting in injury to self or others or damage to Company property or property of others entrusted to the Company or property of fellow employees is prohibited.

- Report immediately to your supervisor, or other supervisor where necessary, any personal injury or any accident involving personal injury or damage to Company property or property entrusted to the Company.

- Gambling on Company premises is prohibited.

- Distributing or posting written or printed material, soliciting of any kind or collecting funds on Company premises requires Company authorization.

- Dishonesty, misrepresentation of facts, or falsification of records (including employment application) is prohibited.

- Willfully refusing or failing to follow instructions or perform designated work is prohibited.

- Loafing, sleeping on the job, or intentional restriction of output is prohibited.

- Careless or inefficient performance of duties, including failure to retain proper standards of workmanship or productivity, is prohibited.

- Be courteous and helpful to customers, visitors, and Company employees.

- Perform no act which is detrimental to the welfare of or reflects unfavorably on the Company or its employees.

- Pay your just debts, thereby avoiding complaint from creditors or garnishment proceedings.

- Unauthorized possession of firearms or weapons on Company premises is prohibited.

- Possessing, dispensing, consuming (except as specifically authorized) or being under the influence of alcohol, narcotics, or other similar mind altering agents while on Company premises or while wearing Company uniform or clothing with Company identification in public is prohibited.

- Unauthorized possession, removal or use of Company property or property of others entrusted to the Company or property of fellow employees, or misrepresentation in obtaining employee benefits or privileges; or any threat, attempt, or act of sabotage, or any action constituting a criminal offense, whether committed on or off duty, will be grounds for discharge and, where the facts warrant prosecution to the fullest extent of the law.

ANY EMPLOYEE IN VIOLATION OF ANY OF THE ESTABLISHED RULES IS SUBJECT TO DISCIPLINARY ACTION UP TO AND INCLUDING DISCHARGE.

Specific Regulations—Flight Attendants

Additional restrictions and/or extensions of the General Rules of Employment apply to Flight Attendants as follows:

- **Company Matters**—Careful discretion must be used regarding discussion of Company business matters. information and procedures with persons outside the Company. This includes discussion of travel privileges. Interviews with news media are not permitted without approval of your Division Head or Public Relations.

- **Company Property**—Removal or borrowing of any Company property is not permitted without specific permission from your Supervisor. The removal of passenger service items. food or beverages from an aircraft is strictly prohibited. The use of Company time. materials. or facilities for any purpose not actually authorized is not allowed. Any violation is cause for immediate disciplinary action up to and including discharge.

- **Deadheading Policy**

  - Civilian clothes which meet Company travel attire requirements may be worn in lieu of the uniform.

  - Deadheading is an on-duty period and the consumption of any alcoholic beverages is strictly prohibited unless deadheading in civilian clothes to home base domicile and scheduled to begin a duty free period upon arrival at home base domicile of at least ten hours.

  - **No sleeping while deadheading in uniform.**

  - **Deadheading crew members entering a sterile area MUST proceed through security screening provided at that city.**

- **Drinking**

  - **The drinking of alcoholic beverages (including beer and wine) is not allowed:**

- At any time while in Continental uniform.
- During the 8 hour period immediately preceding a scheduled trip or Reserve Duty.
- At any time while assigned to Reserve Duty.
- At any time while on duty, including deadheading time, except as indicated under Deadheading Policy.

- The violation of the above drinking restrictions is cause for immediate disciplinary action which may include discharge.

- **Eating on Board the Aircraft**
  - While inflight Flight Attendants may eat, but only:
    - After all passengers have been served and trays collected.
    - In the galley with curtain pulled.
  - Time permitting, avoid more than one F/A per cabin eating in the galley.
  - Eating is **NOT** permitted on board any aircraft while it is on the ground if passengers are on board or if it will interfere with the duties of the ground personnel.

- **On Board Discussions**—Utmost discretion must be used regarding discussions with fellow employees or pass riders. Any such discussion must not detract from service to our revenue passengers and must not convey the pass rider status of any passengers to our revenue passengers.

- **Personal Behavior**—Knitting, needlepointing, reading, listening to stereo and other forms of personal entertainment are not permitted at any time while on duty aboard a Continental aircraft.

TESTIMONY FOR WHISTLEBLOWER HEARINGS
AVIATION SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES

April 27, 1988
Submitted By: Joan Wages
Independent Federation of Flight Attendants
(TWA Flight Attendants)

Mr. Chairman and Members of the Subcommittee:

On behalf of the TWA Flight Attendants, IFFA appreciates this opportunity to testify today in favor of such important legislation. We strongly support it and would urge immediate passage. Employees hired by some carriers understand from the first day that the carrier and its management neither encourage nor support the reporting of safety violations. An atmosphere of intimidation exists that discourages all but the most courageous employees from taking any active role in safety promotion.

One particular incident at TWA, resulting in disciplinary action against a Flight Attendant who came forward through IFFA to report an FAA violation, illustrates the need for this legislation.1/ A TWA flight departed Boston in a B747-100 aircraft with eight flight attendants, despite the fact that the aircraft configuration required nine under applicable FAA regulations. Prior to departure, the Flight Attendant alerted a supervisor but the number was

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1/ IFFA has chosen to maintain anonymity regarding all specific incidents referred to herein to protect the employees. Subject to appropriate confidentiality safeguards, IFFA will provide the Subcommittee with most if not all the names upon request.

not increased. It was then brought to the captain's attention, but the flight still left with only eight Flight Attendants.

The Flight Attendant then came to IFFA, which in turn reported the incident to the FAA. TWA management response to the IFFA representative regarding the FAA report before it was filed is self-explanatory:

> General Manager (to IFFA Representative), "It is to neither your nor my benefit to report this to the FAA."
>
> IFFA Representative: "We are required to report this to the FAA."
>
> General Manager: "They will just be checking our Flight Attendants for flashlights and EPH's (Emergency Procedures Handbook) and the Flight Attendants will get into trouble if they don't have them."
>
> IFFA Representative: "We need to be monitored more closely by the FAA."

Only after IFFA notified the FAA of the violation was the disciplinary letter against the Flight Attendant who came forward issued. TWA clearly singled out this complaining Flight Attendant for punishment in retaliation for Whistleblowing. ¶ TWA policy states: "It is the company's policy to staff flights with FAA minimum crew requirements. The responsibility to ensure that this policy is followed lies with many people." Needless to say, this employee was fully exonerated when the case was arbitrated two years later. Nonetheless, TWA's disciplinary action had a severe chilling effect on the rest of the workforce with regard to reporting safety problems.

The above-described incident occurred before the March 1986 Flight Attendant strike, when the atmosphere was hardly conducive to reporting safety violations. The strike itself, which could only be described as hostile, has made this atmosphere even less conducive now. A number of recalled Flight Attendants have been fired over incidents far less serious than any which might potentially embarrass the Company by reporting safety violations. You may have seen the recent "60 Minutes" program which told the story of a 53 year old recalled TWA Flight Attendant, an active IFFA member with 25 years of seniority and a flawless work record, who was fired for taking four small cartons of milk from an airplane. She had been on duty in excess of ten hours after flying all night to arrive in Paris, unable to take time to eat a meal or even sit down for five minutes. The milk itself was required to have been thrown away after the crew disembarked because of certain health requirements.

Other retaliations have occurred for similarly "serious infractions." When these cases reach arbitration one to two years later, the employees are exonerated with full back pay. But what happens in the meantime? Those who care about their jobs and want to assure they keep them simply cannot consider reporting a safety violation to the responsible government agency. This is why we need a Whistleblower Bill.

Inherent in any Whistleblower Bill is the assumption that the FAA will welcome a report of a safety violation. Accordingly, there must be a conducive atmosphere for a report to be made. The TWA Flight Attendants have found such an atmosphere to be absent.

One other aspect of the Whistleblower issue warrants mention. IFFA has personal experience with FAA inspectors who treat TWA Flight Attendant safety complaints as part of the TWA "labor problem." When Flight Attendants try to bring safety complaints, TWA's principal FAA operation inspectors respond by insisting that the Flight Attendants "report it to the Company." The adverse effect of such a response on the willingness of employees to report safety problems is obvious. The problems go unreported. You should note that during the IFFA strike, at least a dozen TWA employees other than Flight Attendants, including two in management, came to IFFA to report documentable safety violations because they were afraid to go to the FAA. When IFFA tried to report the violations on an anonymity basis, the FAA insisted that the names be provided without much assurance that they would be maintained in confidence. If the employees consented, IFFA provided such names but otherwise the violations went unreported. The FAA inspectors took the attitude that this was just a labor problem and could have cared less about the complaints.

Airlines simply must be prohibited from retaliating against an employee who reports a safety violation. In addition, the FAA must take these complaints seriously. They should provide a means for reporting these violations through round-the-clock hotlines, maintaining anonymity of those reporting and respect for the validity of the report until proven otherwise.

A carrier operating in accordance with FAA regulations has nothing to fear in a Whistleblower Bill.

Mr. MINETA. The subcommittee will please come to order. At this time we have Joseph Guerrieri, Jr., an attorney from Guerrieri, Edmond & James.

Mr. Guerrieri, the statement of the IAM is submitted for the record. If you would introduce your colleagues and proceed in your own fashion.

TESTIMONY OF JOSEPH GUERRIERI, JR., ESQUIRE, LAW FIRM OF GUERRIERI, EDMOND & JAMES, WILLIAM L. SCHERI, AIRLINE COORDINATOR, ON BEHALF OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ACCOMPANIED BY ROBERT GERARDI, LAW FIRM OF GUERRIERI, EDMOND & JAMES; DUANE THRASHER, IAM DISTRICT LODGE 100 REPRESENTATIVE TO IAM PERMANENT FAA COMMITTEE; AND WILLIAM HEFFERNAN, FORMER EMPLOYEE OF EASTERN AIRLINES

Mr. GUERRIERI. Thank you, Mr. Chairman. My name is Joseph Guerrieri; I am with the law firm of Guerrieri, Edmond & James here in Washington, D.C. Seated with me is Mr. Robert Gerardi, who is also of our law firm; Mr. Duane Thrasher, who is on the IAM Permanent FAA Committee representing the International Association of Machinists District Lodge 100, which has jurisdiction over IAM-represented employees on Eastern Airlines; and Mr. William Heffernan, a recently-terminated employee of Eastern Airlines who was terminated in part for his involvement with FAA inspectors.

I present this statement on behalf of Mr. William Scheri who, because of scheduling difficulties, was unable to attend this hearing today. He, of course, is the Airline Coordinator of the International Association of Machinists and someone well-known to the Chairman.

The IAM represents approximately 800,000 employees nationwide and is the largest union in the airline industry, representing 93,935 employees in virtually every craft and class.

The IAM, of course, is deeply committed to safety in the airline industry in protecting its members' rights, particularly those members who cooperate with governmental agencies in reporting maintenance problems and what is viewed as a decrease in the safety margin on particular aircraft.

The IAM welcomes the opportunity to state its reasons for supporting Congressman Oberstar's whistleblower legislation, H.R. 3812, and wishes to take this opportunity to especially thank you, Congressman Mineta, for your leadership in airline safety issues of vital concern to the IAM and to the traveling public.

As a threshhold matter, it is clear to IAM members who repair aircraft that there is a cost-cutting marathon going on in the aviation industry which has really been entered into since deregulation, and this has dramatically impacted the aviation industry. The industry's reorganization in the hub-and-spoke system has meant fewer mechanics and less servicing for more planes, approximately a third more since 1978, with a frantic schedule.

Given the hub-and-spoke system's demand for aircraft usage and quick turnaround time, our members constantly report that numerous repairs are being delayed. Unfortunately, on-time departures are virtually the only yardstick that management uses to measure a maintenance foreman's or a mechanic's performance. Haste is encouraged by the hub-and-spoke systems, and this has led to a number of abuses, including signing off of aircraft with mechanical problems or some defects, what has become known as "pencil whipping." This is really done in an effort to accelerate the pace of maintenance, to get that aircraft back into the air and on to its next destination.

The IAM obviously becomes deeply concerned when the FAA must fine Pan American Airways $1.95 million, Eastern $9.5 million in 1986 and a proposed fine of $823,000 for 1988, and most recently—as has been revealed—Continental will be fined $1 million for safety violations.

Unfortunately, the IAM believes that this is merely the tip of the iceberg. Unfortunately, the number of FAA inspectors woefully trails behind the industry's growth, at least in aircraft, since deregulation. The IAM strenuously asserts that, in part because of the shortage of FAA inspectors, effective surveillance by the FAA can only be achieved when a man or woman who turns the wrenches on the aircraft can be free to report violations and discrepancies.

Today our IAM member employees face letters of reprimand, suspensions, and even terminations for reporting safety violations to the FAA. Some company officials have unfairly and heavy-handedly sought swift retribution against those that discover and report infractions. We believe nowhere has this campaign of intimidation and scare tactics been more apparent than on Eastern Airlines which, as the Chairman knows, is a subsidiary of Texas Air.

During a 1986 visit by certain officers of the IAM, an Eastern Vice President advised that if he found out that any mechanic was communicating with the FAA for any reason, that mechanic would be fired. This attitude appears to pervade Eastern management from the top to the bottom. In a conversation with an IAM mechanic on Eastern Airlines, a manager for aircraft maintenance referred to people who called the FAA as "slime" who were going to get the other mechanics into trouble if reports to the FAA persisted.

The FAA is correct in characterizing the attitude on Eastern Airlines as an insensitivity to safety problems. What IAM members have experienced, however, is an absolute hostility by that airline toward those who communicate with the FAA. We have found that a number of persons who have communicated to the FAA and who have been of material assistance to that agency in fulfilling its mandate have been threatened or terminated. And it is, of course, of great concern to IAM members that when they make a report which they believe to be confidential to protect their identity, that the company is able through a variety of means to discover who it was that filed the complaint, and that person subjects himself to reprisals.

Now, while the FAA has promised, for instance, that employees who call its hotline will have their identity remain anonymous, as a practical matter that hasn't happened. The reason for that is that when faced with a charge or complaint by an IAM member, the FAA goes to management to determine whether the complaint has merit. Frankly, it doesn't take Dick Tracy to determine then which mechanic worked on a particular aircraft that the FAA is inquiring about, to identify who that particular mechanic was that made the report. In some cases we have found that reprisals then follow. Seldom is the mechanic who actually makes the report himself consulted by the FAA or allowed to have discussions with the FAA.

We have also found that Eastern Airlines has imposed a new restrictive policy about talking to the FAA. Any person who has contact with the FAA must file a report with Eastern Airlines or subject himself or herself to termination. This form, which is referred to in Mr. Thrasher's testimony, is what is called an "activity report."

There are a number of instances which we wish to bring to the committee's attention where we believe that mechanics have been unfairly terminated because they did nothing more than assist the FAA. Congressman Oberstar has already testified concerning a Mr. McNary who was terminated at Kansas City, really for doing nothing more than having posted the FAA hotline number. Obviously, the company did not give that as the sole reason for his termination. He was accused of having failed to properly direct his crew in a routine windshield replacement, but we fully believe that that was merely protectual and that the real reason was his having posted the hotline number. Indeed, the letter of his termination mentions that fact.

We have other mechanics who have reported such things as a hole in a door in the landing gear, and have put that in the logbook. In this particular instance the mechanic who did that was terminated after an FAA inspection team met the aircraft at its next destination.

We have other instances where mechanics with as many as 19 years' seniority have been terminated for noting problems with aircraft which required a delay of that aircraft; in one case, a 75-minute delay was required to make repairs. It is not that those matters that were noted in the logbook did not need repair. They did. And in fact, they were repaired. But because the time needed for that repair was 75 minutes and caused a delay, the carrier terminated that employee.

Mr. Heffernan in his written testimony, which has been submitted to the committee, unfortunately reveals a similar pattern of discouraging cooperation with the FAA at all costs. Mr. Heffernan, an IAM mechanic, was fired for correctly entering maintenance discrepancies in his aircraft maintenance logbook. This caused some delay because those repairs had to be made. It was also known to the company that he was in contact with the FAA and had actually been seen talking to FAA inspectors.

Mr. Heffernan is but another victim, we believe, of a company which wishes to make an example of a mechanic who did his duty and refused to turn and look the other way at safety violations.

The IAM is challenging the terminations that we have mentioned, and a number of others, through the grievance procedure. However, those unjust terminations often take years to go through the entire system and be arbitrated. In the case of Eastern Airlines, for instance, by clogging the grievance process and firing a number of employees for their involvement with the FAA, we believe the carrier has attempted to suppress the truth through these brutal intimidation tactics.

We believe that despite the excessive pressures that have been applied to employees of the various airlines to hurry aircraft into the air, we have not experienced a greater deterioration in safety only because the IAM member mechanic force's union contract gives them some security in resisting pressures to cut corners and do offer a modicum of protection. However, mechanics and other employees should not be intimidated, disciplined, or fired merely for fulfilling their obligation to the flying public. Mechanics and other personnel who report violations of FAA regulations to Federal agencies should be protected and encouraged rather than punished. The FAA must continue to rely on those in the best position to observe safety problems: airline employees.

With this in mind, the IAM strenuously endorses the whistleblower legislation, H.R. 3812. We believe the bill represents a modicum of protection for employees to permit the free flow of critical safety information without fear of reprisal.

Both Mr. Heffernan and Mr. Thrasher have submitted their testimony which we would ask be received into the record, and they stand ready to answer any questions that the committee may have of them.

Mr. MINETA. Very good. Thank you very much, Mr. Guerrieri.

We again have a Call of the House so we will recess at this point for 15 minutes.

[Recess.]

Mr. MINETA. The subcommittee will please come to order.

Thank you very much, Mr. Guerrieri, for your testimony, and the testimony of Mr. Heffernan and Mr. Thrasher will be made a part of the record.

I'd be interested in knowing whether your collective bargaining agreements give any protection to employees who in fact do contact the FAA. And if so, is there a requirement that the employee act in good faith with reasonable grounds to believe that there is a safety problem? Is there a requirement that he be notified before FAA is contacted?

Mr. GUERRIERI. First, Mr. Chairman, the collective bargaining agreements that we are familiar with on Eastern, TWA, Northwest, and some of the other major carriers do not specifically have a provision which in any way protects employees from whistleblowing as such. There are, of course, general provisions that prohibit unjust discharges and terminations.

The difficulty has been, particularly on carriers like Eastern Airlines, that the grievance procedure backlog has been two to three—in some cases as much as three—years long that an employee who believes he was unjustly terminated must wait, out of work without any means of livelihood, before he goes before an arbitrator. Moreover, arbitrators are not charged with enforcing Federal law. They are merely charged with interpreting a collective bargaining agreement. So in many cases where we have just a general provision we are really at a great disadvantage, and I think this points up the necessity of this piece of legislation.

As to the good faith requirement that you have questioned others about, Mr. Chairman, we believe that good faith is undoubtedly read into any enforcement of a provision such as this, be it statutes that prohibit discrimination or any other kind of statute that calls for someone making a charge and going through an administrative procedure before legal action is instituted. We don't believe that it is necessary to put any further burden on an employee to perhaps discourage him from making legitimate charges to an agency, such as requiring that if he doesn't prevail he must pay the attorney fees of some corporation. We believe that that would so discourage anyone who is of moderate means, who works for a living, from ever filing one of these charges for fear that he will be financially crushed by having to pay the fees of a corporation, who would hire a corporate law firm to handle this proceeding.

Finally, with regard to your question of requiring notification in advance of going to the FAA, we don't believe that would be anything but counterproductive. If an employee in effect has to negotiate with an air carrier that is, perhaps for financial or other reasons, "pencil-whipping" aircraft, in effect you're consulting the fox about the chickens, and I don't think that's a wise course to follow. We don't feel any prior notification of the company is necessary.

We believe that it is a serious enough event for an employee to have to take it upon himself to go to a Federal agency to report a safety problem—that, in and of itself, is very serious. This statute would not prevent someone from actually being fired; it merely means that he has a means of recourse in the event that he is. So he's taking a very substantial risk, even in reporting under this piece of legislation.

Mr. Mineta. Your testimony focuses on cases in which Eastern has retaliated against employees who contact FAA. Do you know whether or not other airlines are more tolerant of their employees giving safety information to the FAA?

Mr. Guerrieri. We know of isolated instances on some of the other carriers, but nowhere have we found a pattern and practice which has been as pervasive as what we've seen at Eastern Airlines. We have no reason to believe that any carrier likes it when its employee goes to a Federal agency because he doesn't feel that the matter can be resolved right there on the property. He feels that somehow management will look upon him with a jaundiced eye if he reports it directly, or where he believes that the safety problems are so severe that he must go to a Federal agency to request their intercession.

We do not believe that the problem is limited to Eastern Airlines, but nowhere do we find it more pervasive than on Eastern Airlines.

Mr. Mineta. Mr. Heffernan, on page 2 of your testimony you say, "I believe that I was fired because I was in contact with FAA inspectors." I was wondering if you could explain a little more about the circumstances around which you were fired?

Mr. Heffernan. Certainly. Prior to my termination from Eastern Airlines I was in close contact with FAA inspectors concerning some practices of Eastern Airlines that I found objectionable and that I felt violated their own maintenance procedures, as well as the FAR's. Eastern Airlines knew that I was in contact with the

FAA. The FAA came down to the maintenance area, and I readily communicated with them. Eastern Airlines supervisory personnel knew that I was seeking documentation through the maintenance computer system, through the log sheets that were readily available to all the people in the maintenance department, to be able to document my position to the FAA. Without documentation it's merely hearsay. Some of the people who testified earlier on the large number of postcards that maybe could not be substantiated, possibly those people did not have the documentation that I did.

Eastern Airlines knew I had this information.

When they decided to fire me, they accused me of delaying an aircraft by writing up maintenance items in the discrepancy report of the aircraft that were not important to the safety of the flight, and they accused me of deliberately delaying the aircraft. I'd like to note, sir, that these items I wrote up were valid items. They required repairs. The repairs took——

Mr. MINETA. Mr. Heffernan, let me ask you, were those MEL items?

Mr. HEFFERNAN. No, sir. As a matter of fact, two of the items were not in the MEL because the aircraft was not certified without those being repaired. The MEL consists of items which the FAA gives the airline company the opportunity to defer. Two of the items I wrote up were non-deferrable and they were required to be fixed prior to flight. But they contradicted themselves in their own maintenance manuals by saying—the Eastern supervisory personnel—that they weren't important. They claimed the aircraft was airworthy.

In my testimony, sir, in exhibit, there is a copy of the 727 maintenance manual which clearly states at the bottom that the placards that I wrote up are required.

Eastern Airlines has no valid reason—and I don't believe they can defend their actions against me—by claiming that I deliberately delayed the aircraft when I didn't delay the aircraft, sir. All I merely did was report the problems in the maintenance logbook like we have always done traditionally. But because I was in contact with the FAA prior to that, I felt that they were merely using that as an excuse to terminate me. Now it's up to my representatives and the arbitration process for me to clear myself of those charges, but in the meantime I'm unemployed. Other mechanics possibly feel intimidated by management decision and maybe they won't contact the FAA and maybe they won't write things up.

Mr. MINETA. You've been with Eastern Airlines for 15 years, as I understand it. How many letters of reprimand have you had in that time period?

Mr. HEFFERNAN. I got a letter of reprimand approximately two weeks before I was fired where I was accused of not working expeditiously and having an attitude problem. The facts surrounding that letter were that while I was working on a 727 aircraft I noticed some popped and loose rivets——

Mr. MINETA. You said popped and loose rivets?

Mr. HEFFERNAN. Yes, sir. And I wrote those items up in the logbook, which I felt I was morally responsible to do. The aircraft took a delay, and the particular supervisor accused me of not working hard enough.

Mr. **Mineta**. Now, was that the first letter in your 15 years of employment with Eastern Airlines?

Mr. **Heffernan**. I think so.

Mr. **Mineta**. It appears that there have been other times when you have been called in, I guess you might say, and chewed out about something where you were called into the manager's office and threatened with termination "because I insisted on repairing a part of the aircraft interphone system which legally had to be working prior to departure. The maintenance foreman wanted to defer the repairs, which he claimed was not required prior to the departure. I proved to the manager that I was right, but I was warned not to try to solve all of Eastern's safety problems single-handedly."

Mr. **Heffernan**. That is correct, sir.

Mr. **Mineta**. That was just a verbal reprimand?

Mr. **Heffernan**. I assumed it was a verbal warning. Actually, it was a threat aimed at me continuing to take the hard line towards safe operations.

Mr. **Mineta**. But in your 15 years prior to this letter of reprimand dealing with loose and popped rivets, had you received any other letter of reprimand?

Mr. **Heffernan**. One time, about seven or eight years ago, they gave me a letter of reprimand that was taken out of my file because it was found to be baseless. I was accused by the company of attempting to coerce my fellow employees to slow down prior to a contract labor dispute. That was taken out of my files because it was found to be baseless.

Mr. **Mineta**. And then the next one was this one just before you were terminated?

Mr. **Heffernan**. Yes, sir. I'd like to point out also that the contract that the maintenance people at Eastern are under does provide for variable disciplinary action and "stepped" type of disciplinary action when you are accused of violating a company rule or regulation. This was not given to me in my case, and also in my case I was not provided with the company rules and regulations which I allegedly violated. So therefore, the only thing I can conclude is that the company is merely fabricating these violations to have some excuse to get me off the property.

Mr. **Mineta**. So now they are in effect saying that loose and popped rivets are not a threat to safety?

Mr. **Heffernan**. They did not say it in that particular letter of reprimand where they accused me of not working expeditiously enough. They——

Mr. **Mineta**. No, no. But in terms of your termination this time, you were claiming that these loose and popped rivets are an unsafe condition and that the plane ought not to go that way?

Mr. **Heffernan**. Well, that's what I claimed prior to my termination, sir, but the particular circumstances on my termination were not involved with loose and popped rivets.

Mr. **Mineta**. That's something else?

Mr. **Heffernan**. That was a previous case where I got the letter of reprimand for my failure to work expeditiously, according to them.

The case concerning my termination was with the leading edge flaps with a hole where a plug was supposed to be, and FAA required placards that were not there or illegible, as well as some lighting in the stairwell area.

Mr. MINETA. Well, if it's an FAA required item it's not airworthy, is it?

Mr. HEFFERNAN. That's the way I look at it, sir, but obviously the maintenance supervisor at Eastern Airlines didn't think that way.

Mr. MINETA. So what's your status now? You are appealing that, so that's subject to arbitration?

Mr. HEFFERNAN. That's correct, sir. I just have to wait for my case to come up, however long that will take.

Mr. MINETA. And you think that will be how long?

Mr. HEFFERNAN. Possibly 18 months, possibly longer.

I'd like to point out, sir, in my testimony I also mentioned that the FAA took planes out of service at Eastern Airlines for rivets being loose, and I believe they also have done the same for placards recently, since I have been terminated.

Mr. MINETA. Texas Air and Eastern have alleged that Eastern employees are filing frivolous complaints with the FAA to harass the company, so I'd like to ask the members of the panel to respond to these charges, Mr. Thrasher, Mr. Heffernan, Mr. Guerrieri.

Mr. GUERRIERI. Mr. Chairman, I would just like to say that I am familiar with that charge. I think, however, that those charges have not been borne out by the most recent investigation by the Department of Transportation, the FAA, which has revealed that a large number of planes have had to be taken out of service because of safety defects and violations.

In addition, we believe that because of the pressure placed on managers to get those aircraft in the air as quickly as possible, corners have been cut, and our mechanics have resisted that kind of corner-cutting. This is not a labor issue. This is truly a safety issue. No mechanic wants to be responsible for signing off on an aircraft that is simply not airworthy or has a number of defects so that it cannot afford to have repair delayed.

Mr. THRASHER. Mr. Mineta, I'd just like to say with regard to Mr. Heffernan's comments on the placards and the items that he wrote up in the logbook, the FAA currently is on the ramp doing the very same thing, having us write up into the logbook missing placards, missing screws along the leading edge of the aircraft. He's no more guilty of doing just what they are doing, and they are causing delays of our aircraft of anywhere from 20 minutes, a half an hour, to one hour delays as a result of our having to repair those items before the aircraft can depart.

Mr. MINETA. Mr. Thrasher, what is your status?

Mr. THRASHER. I'm a line maintenance mechanic at Miami terminal. I'm also the FAA liaison for the District 100 of the IAM.

Mr. MINETA. And what kinds of things have you seen in terms of—oh, let's say, I guess you might characterize it as a "guilt by association" kind of situation?

Mr. THRASHER. Well, I know from past experience—I have talked to some of the mechanics where they have called the FAA and tried to get a response on a particular item. The first thing that has happened, the FAA would call the liaison man in our ivory tower, which is over on 36th Street and Lejeune Road, and he in turn would call the maintenance manager and they would call the mechanic in and want to know what the problem is. Therefore, he didn't have any anonymity as to reporting that problem.

Mr. MINETA. Are most of the terminations over flights being delayed because the A&P mechanic may say, "well, we've got to do this or do that, or writes it into the logbook and——"

Mr. THRASHER. Well, we've had some terminations as a result of that, but we've also had some other due to—the new attendance program at Eastern Airlines. Some of the terminations have been as a result of that.

Mr. MINETA. Are you familiar with any mechanics who have been terminated because of a delayed flight, as contrasted to an FAA inspector on the ramp inspections today delaying a flight?

Mr. THRASHER. Mr. Heffernan is an example of that, where he wrote it in the logbook, causing a delay. We also have that in Kansas City, an incident where the mechanic—saw the leading edge slats had a light problem and had nine repeaters. It's under the repeater program. He chose to try to fix the item. Usually by the time you have nine repeater items you've pretty much had everything changed in the system, so you've got a problem that's going to consume time in order to repair it. It's not just going to be some sort of simple fix.

Mr. MINETA. Do you have any confidence in that 800 hotline number?

Mr. THRASHER. Well, we've been told that it's 24 hours a day, but it's been brought to my attention that it's not 24 hours a day. There again, when you do call it, are they going to keep your anonymity? The company is going to find out that you did it, number one, because chances are the item you're reporting is something you've been involved with yourself. At Eastern we're required to post a gate listing as to what mechanic works which aircraft and which gate, so the company knows just what you're doing all the time. So it's hard to call the hotline and not be discovered.

Mr. MINETA. What's the protection for that anonymity or to keep the name from being released? Any idea what ought to be done in that instance? What can we do to "ensure" that a person's identity is protected?

Mr. THRASHER. Well, I think this bill would be one thing. Not so much the anonymity, but at least you have some protection if they do find out. Right now it's termination, and you're looking at 18 months to 2 years down the road before you get your job back, even if you are right.

Mr. MINETA. Well, thank you very much, Mr. Guerrieri, Mr. Thrasher, Mr. Heffernan, and Mr. Gerardi for being here on behalf of the IAM. We appreciate it.

[The prepared statements of Messrs. Scheri, Thrasher, and Heffernan follow:]

STATEMENT OF
WILLIAM L. SCHERI
AIRLINE COORDINATOR
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
BEFORE THE SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 27, 1988

Dear Mr. Chairman and Members of the Subcommittee:

My name is William L. Scheri. I am the Airline Coordinator for the International Association of Machinists and Aerospace Workers ("IAM"). The IAM represents 801,457 members in a variety of industries throughout this nation. We are the largest union in the air transport industry, representing 93,935 employees in virtually every craft and class. This union is deeply committed to safety in the airline industry and in protecting our members' rights who cooperate with governmental agencies in reporting maintenance problems and instances where the safety margin on a particular aircraft is compromised. The IAM welcomes this opportunity to state our reasons for supporting Representative Oberstar's "whistleblower" legislation, H.R. 3812, and wishes to thank Congressman Mineta for his leadership in airline safety issues of vital concern to IAM members and the travelling public.

Present with me today are two IAM mechanics who combined have over thirty-five years of experience working for Eastern Air Lines. Mr. Duane Thrasher represents District Lodge 100, the IAM lodge responsible for Eastern Air Lines, on the IAM's permanent FAA Committee. Mr. William Heffernan was until recently an Aircraft Electronics Mechanic on Eastern Air Lines.

Unfortunately, he was fired after reporting to the FAA Eastern's attempts to circumvent FAA safety requirements.

As a threshold matter, it is clear to IAM members that repair aircraft that the cost-cutting marathon which the aviation industry has entered since deregulation has dramatically impacted aviation safety. The industry's reorganization into the hub and spoke system has meant fewer mechanics and less servicing for more planes (one-third more since 1978) with frantic scheduling. Even in those rare instances where the time, personnel and parts required to repair a particular problem are present, management will still often defer needed repairs. Time spent on repairs is treated as lost money. Given the hub and spoke system's demand for aircraft usage and quick turnaround time, numerous repairs are delayed. Mechanics can attempt to report trouble on items impacting airworthiness or on MEL items which are left open too long but they are regularly overruled and all too often threatened by management to get the planes in the air on schedule.

Unfortunately, on-time departures are virtually the only yardstick management uses to measure a maintenance foreman or mechanic's performance. Carriers often base supervisor's pay, benefits and comp time upon on-time performance. The haste encouraged by the hub and spoke system has led to abuses of foremen's power to "sign off" or "pencil whip" items in need of repair. A&P mechanics are required by FAA regulations to signify if a particular function or repair has been completed or not by signing his name on the aircraft maintenance log/performance report. Foremen, in their attempt to accelerate the pace of maintenance, have taken to frequently initialling log performance reports when IAM mechanics refuse to release an aircraft with uncorrected problems. These items subsequently go without repair for weeks at a time.

One must ask where the Federal Aviation Administration has been while such aviation maintenance abuses are taking place. Such abuses threaten the safety of the travelling public including IAM members and their families. We are concerned when the FAA must fine Pan American ($1.95 million), Eastern ($9.5 million in 1986 and a proposed fine of $823,500 for 1988), and most recently Continental which is to be fined nearly $1 million, for safety violations. Unfortunately, we believe the FAA inspection staff is seeing only the tip of the iceberg since the number of inspectors still woefully trails behind the industry's growth since deregulation. Today there are twice the number of air carriers than there were ten years ago. The ratio of inspectors to carriers in 1986 was approximately 1.6 inspectors per carrier, which is far below the 4.17 inspectors per carrier ratio enjoyed in 1977. Even with recent increases in inspectors, the FAA's enforcement capabilities remain severely limited numerically and organizationally. Both a June 1987 GAO report and the ongoing OTA study of the FAA have been highly critical of FAA oversight of airline maintenance.

Earlier this month, John R. Lauber, a member of the National Transportation Safety Board, appeared before this subcommittee and stated that "[a] sufficient margin of safety in air carrier operations can only be achieved through effective surveillance by FAA inspectors." The IAM agrees with Mr. Lauber and strenuously maintains asserts that such "effective surveillance" by the FAA can only be achieved when the man or woman who turns the wrenches on the airplanes can be free to report violations and discrepancies. Today, our IAM-member employees face letters of reprimand, suspensions and even terminations for reporting safety violations to the FAA. Some company officials have unfairly and heavy handedly sought swift retribution against those who report infractions. Without the protection provided in Congressman Oberstar's proposed legislation, the FAA will see its lifeline to several air carriers severed by the ax of immediate firings of good and responsible safety-conscious employees whose only crime is to have reported wrongdoing by their employer.

Nowhere has this corporate campaign of intimidation and scare tactics been more actively pursued than at Eastern Air Lines, a subsidiary of Texas Air Corporation. During a 1986 visit with Eastern Vice President of Line Maintenance Terry Reimer, IAM District 100 General Chairman Russ McGarry and Combined Shop Chairman Don Miller received the unvarnished management policy concerning worker contact with the FAA. Mr. Reimer stated that if he found out that any mechanic went to the FAA for anything, he would have that mechanic fired (see Exhibit

A, Affidavit of Termination Threat by Eastern Air Lines' Management). This attitude appears to pervade Eastern management from top to bottom. In a conversation with an IAM mechanic, Eastern Air Lines Manager for Aircraft Maintenance Phil Anson referred to people who called the FAA as "slime" and speculated as to how they might come to a violent end. (See Exhibit B.) He also stated that the FAA "slime" were going to get the other mechanics "into trouble."

It is tragic that the imposition of significant fines by the FAA, lost air time to perform needed repairs, and the public reaction to revelations about Eastern's poor safety practices have resulted in a concerted effort by Eastern management to discourage FAA contact. A three-week special inspection in June 1987 and the FAA's recent follow-up study to its 1985 inspection were critical of Eastern's deferred maintenance program and recurring problems with certain equipment. The June 1987 FAA team said employees had to report a a problem numerous times before the proper maintenance was performed. One inspector in particular accused "maintenance personnel [of] placing departure schedules ahead of following proper maintenance procedures to assure aircraft reliability." (See Exhibit C, Travel Weekly, 12/10/87, p. 8).

Most recently, the current FAA ramp-by-ramp inspection of Eastern was brought on, in part, by a letter to Eastern from Ron Harding, Acting Regional Counsel in the FAA's Southern Region. He proposed a $823,000 fine after detailing a number of charges that Eastern had violated regulations by allowing aircraft to fly in an unairworthy condition. He reported that the carrier had operated a 757 without first obtaining an airworthiness release from Eastern maintenance personnel. Indeed, FAA Administrator McArtor further emphasized the necessity for a safety inspection of Eastern because of "the continuing pattern of fines, safety violations and _apparent_ _insensitivity_ of some of Eastern's officials." _See_ Exhibit D, _Aviation Daily_, 4/14/88, p. 73.

While the FAA may characterize Eastern's safety problems as "insensitivity," our members would describe it as Eastern's hostility in dealing with those it suspects of communicating with the FAA. A number of those whose reports to the FAA have been of material assistance to that Agency's investigations have suffered suspensions and terminations. In his written testimony, IAM member Thrasher will point out some of the ways in which the names of those making safety reports to the FAA are revealed to the company and why the FAA's promise of anonymity for those calling its hotlines, as a practical matter, has not been kept.

It is important to remember that those unscrupulous carrier officials who terminate workers because they assisted the FAA attempt to conceal their true motive for the termination. Most often some pretextual grounds for the termination is cited. On September 18, 1987 mechanic Jeff McNary's employment was terminated in Kansas City for supposedly failing to properly lead and direct his crew during a windshield replacement. _See_ Exhibit E for supporting papers. In reality, there was no management personnel on the field for support and he was monitoring the situation as best he could in accordance with his responsibilities as lead mechanic. Aside from listing this lame justification for the termination, the letter of termination also noted as a further ground for termination that Mr. McNary had "encouraged mechanics in Seattle to report safety or procedural violations by Eastern management to the FAA." In fact, Mr. McNary was suspended for ten days in 1987 for posting the FAA hotline number. Clearly, management's citing his distributing the FAA hotline number revealed the true reason for his termination.

Mr. Heffernan's testimony unfortunately reveals a pattern of discouraging cooperation with the FAA at all costs. Mr. Heffernan, an IAM mechanic, was fired for correctly entering maintenance discrepancies in the aircraft maintenance logbook, thereby causing a delay while repairs were being made. What his letter of termination fails to mention is that Eastern knew he had been in contact with the FAA regarding foremen signing off on inspections they did not conduct. He was terminated because he had been seen frequently talking to FAA inspectors. The IAM submits that Mr. Heffernan was a victim of a company making an example of a mechanic who refused to look the other way.

The IAM is fighting such terminations and suspensions through the grievance process. Unfortunately, these unjust actions can often take years to arbitrate. Indeed, the total number of grievances, terminations and discipline cases submitted to the District Lodge 100 System Board of Adjustment last year is seven times the number submitted in 1985, the year before Mr. Lorenzo took over the company. More than 3000 grievances were filed against Eastern during the first nine months of 1987. This incredible backlog will keep cases like that of Mr. Heffernan from being heard for well over a year. By clogging the grievance process and firing at will employees accused of reporting to the FAA, Eastern has attempted to suppress the truth through brutal intimidation tactics.

CONCLUSION

Few today would dispute that excessive pressure has been applied to employees to hurry aircraft into the air because constraints brought about by the hub and spoke system and the willingness of some carriers to sacrifice safety. We have not experienced a greater deterioration in safety because of the IAM-member mechanic force whose union contract gives them the security to resist their bosses' pressure to cut corners. Whenever our mechanics see any airworthiness or equipment problems, they report them to the carrier and will not release the aircraft involved until they are corrected. However, mechanics and other employees should not be disciplined and/or fired for fulfilling his obligation to the flying public. Mechanics and other personnel who report violations of FAA regulations to federal agencies should be protected and encouraged rather than punished. The FAA must continue to rely on those in the best position to observe safety problems--

airline employees. Moreover, we are greatly concerned for the safety of the travelling public, for it must be remembered that we, our wives, families and our friends fly on those aircraft.

With this in mind, the IAM strenuously endorses the "whistleblower" legislation H.R. 3812. Similar legislation now protects workers in fields such as trucking and the nuclear industry. Such legislation is long overdue in the aviation industry. Rep. Oberstar's bill covers a broad category of operations personnel, from mechanics and other maintenance personnel to flight attendants and air traffic controllers. It allows for investigations conducted by the FAA, the agency best qualified to judge the impact of the information IAM members can offer. Public hearings and the designated time frame for FAA decision-making (six months from the date of application) will allow for a fair hearing and prompt adjudication. The bill represents a modicum of protection to permit the free flow of critical safety information without fear of reprisal.

EXHIBIT A

AFFIDAVIT OF

TERMINATION THREAT BY EASTERN AIR LINES' MANAGEMENT

Eastern Air Lines was going through some very difficult times in the Spring of 1986, after the FAA had fined Eastern over $9 million. There were many questions about maintenance procedures being asked by the mechanics. Most of the questions were related to Line Mechanics' problems.

A meeting was scheduled with Eastern's Vice President of Line Maintenance, Terry Reimer. This meeting took place in Mr. Reimer's office and was attended by Line Maintenance Chief Stewards from JFK, Atlanta and Miami, General Chairman Ron Orr, and District 100 IAMAW Vice President Russ McGarry.

During the course of the conversation, someone mentioned that because the pressure was so great and because management was not responding to the mechanics questions, some mechanics had considered going to the FAA to ask the proper procedures, especially on Log Book sign-offs. Mr. Reimer stated that if he found out that any mechanic went to the FAA for anything, he would have that mechanic fired.

Russ McGarry

Russ McGarry, Vice President
and General Chairman
District 100, IAMAW

Donald L. Miller

Donald L. Miller
Combined Shop Chairman (former Miami
Line Maintenance Chief Steward)

Notary Public: Jan A. Swing

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC.10,1991
BONDED THRU GENERAL INS. UND.

Signed before me this 15th day of April, 1988.

⑤

EXHIBIT B

November 10, 1987

FAA Questions

On 10-30-87 we had a crew meeting at 0700, called by foreman Sandy Galvez. At this time, we were told about the delays incurred on 10-29-87 and informed that this amount of delays would not be tolerated in the future. Also, that the FAA had been called 5 times about the aircraft worked on 10-29-87, and several people were going to lose their jobs and some of them had a lot of seniority. At this time, Mr. Anson asked if anyone knew who called the FAA, he didn't mind people calling the FAA, he just wanted to know when they did so he would be prepared for them.

Later, Mr. Anson came back and stated, "You all know who called the FAA and I will tell you what we would do with this slime at Frontier, they would find their bodies in a dumpster, these slime are not only going to get me in trouble, they are going to get some of you in trouble to."

On 11-3-87 after Mr. Adams discharge, I attempted to discuss Mr. Adams discharge with Mr. Anson. I asked if there was any point in talking about the firing. He said, "No, that the FAA had told him they were tired of all the calls and he was to discipline his employees." On the morning of 11-4-87 Mr. Zeugal stated that Mr. Adams had called the FAA 44 times and he had brought his discharge upon himself.

Donnie M. Rice

Donnie M R

②

EXHIBIT C

Travel Weekly 12/10/87 Vol 46 No. 108 p 8

FAA Recommends Continued Surveillance of EAL's Maintenance

SAYS MERGERS LEAD TO NONCOMPLIANCE PROBLEMS AND 'HIGHLY VOLATILE' SITUATION

■ WASHINGTON — A special inspection report on Eastern Airlines by the Federal Aviation Administration recommended continued surveillance of the airline's maintenance practices because of the carrier's "highly volatile situation."

The report, which is based on inspections that were begun last June in the eastern U.S. by an 11-member panel, noted that "the acquisition of additional carriers by a holding company and mergers of any magnitude create numerous problems, causing in some areas noncompliance" with some safety and maintenance rules.

The inspections, triggered in part by employee complaints — and by what the FAA called "adverse publicity" about Eastern — focused on deferred maintenance and related recordkeeping, crew proficiency and other service areas.

Eastern pilots, as reported, testified in Congress recently that pressure to depart on time results in too much deferred maintenance.

But management has countered that the pilots are using "scare tactics" as part of the simmering labor disputes at Eastern.

On crew performance generally, the FAA said there were no significant findings.

But one inspector reported that "flight crews may not be recording all of the problems which occur in flight."

The same inspector also said the airline was "not following proper procedures" in checking and correcting discrepancies, and that "maintenance personnel are placing departure schedules ahead of following proper maintenance procedures to assure aircraft reliability."

Part of Eastern's maintenance system is a so-called "repeater program" that is designed to detect recurring problems with particular aircraft.

In some instances, however, the FAA team said employees reported a problem numerous times before the proper maintenance was performed.

The report stated that "There may be a major maintenance problem in the repeater program."

The report also said that the airline was using outdated manuals and had a shortage of spare parts at some locations, but added that Eastern's management cooperated fully with the inspections and took "immediate corrective action where possible" when problems were uncovered.

Eastern, nevertheless, was critical of the report, saying that the FAA team relied heavily on the words of disgruntled pilots and mechanics.

The airline defended its safety record as "among the industry's best."

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Marines Seek Bidding on Pact Of $2 Million

■ QUANTICO, Va. — The Marine Corps Development and Education Command asked for bids by Jan. 4 on a $2

EXHIBIT D

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INTELLIGENCE

EFFORTS to increase airport capacity will suffer under a reorganization plan sent by FAA to DOT Secretary Jim Burnley to drop its active Airport Capacity Office and assign its functions a subordinate role in a think tank-type Operations Research Office.

DOT and PSA have reached agreement that resolves an enforcement action against the carrier for its on-time performance record at San Francisco. PSA agreed to reschedule chronically late arrivals and departures so that 70% of its flights operate within 15 minutes of schedule and that no more than 25% of its flights would be more than 30 minutes late.

AMERICAN Chairman Robert Crandall and carrier officials held a Sabre demonstration last week in Washington, D.C., for DOT officials, including Deputy Secretary Mimi Dawson. Session, planned just before CRS talks with the U.K., will be followed by a similar one by United.

BRITANNIA Airways, based at Luton Airport, north of London, has applied to the U.K. Civil Aviation Authority to operate a series of charter flights to Australia, likely using a 767-200ER.

U.S. TO INVESTIGATE EASTERN SAFETY, TEXAS AIR FITNESS

DOT and FAA, questioning the compliance disposition and financial viability of Eastern and its parent company Texas Air Corp., yesterday announced the start of two new investigations involving Eastern and Texas Air Corp. and a proposed civil penalty against Eastern of $823,500 for violations of federal air regulations. DOT will conduct a preliminary investigation into the continuing fitness of Texas Air carriers, including Eastern, while FAA is starting a "hands-on" inspection of all 267 aircraft in Eastern's fleet, said FAA Administrator Allan McArtor.

Both investigations are to take 30 days, after which the two agencies will decide whether to pursue certificate action against fitness or operating certificates held by Texas Air carriers. "I want to ensure that the continuing pattern of fines, safety violations and apparent insensitivity of some of Eastern's officials do not erode the margin of safe flight for tomorrow's ticket holder," said McArtor at a news conference in Washington, D.C. McArtor and DOT Secretary Jim Burnley emphasized that they do not believe Eastern is placing passengers at risk, or immediate action would have been taken against the carrier. McArtor said that Eastern has been under very heavy FAA surveillance for some time, in accordance with FAA policies to provide special scrutiny over carriers with financial difficulties or labor problems.

McArtor said the problems observed at Eastern "have not developed to the point where certificate action is required." FAA at the same time, however, released a letter to Eastern dated April 12 from Ronn Harding, acting regional counsel in FAA's Southern Region, proposing the $823,500 fine after detailing a number of charges that Eastern violated regulations by allowing aircraft to fly in an unairworthy condition, in one instance for 709 flights. "Eastern operated the aircraft in a careless or reckless manner which endangered the lives and property of others," FAA's letter said of the violations. Carrier also was cited for operating a 757 without first obtaining an airworthiness release from Eastern maintenance personnel and for operating a 757 on 102 flights with a fan blade that did not meet standards because of a bird strike. FAA inspectors found that Eastern in June (Continued)

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TEXAS AIR INVESTIGATION (Cont.)

1987 used 47 certificated aircraft dispatchers who had not completed required competence checks within the previous 12 months. FAA also found that a July 1987 flight from Orlando to San Juan was boarded without flight attendants on the aircraft when the 252-seat A300 should have had six flight attendants. Eastern was cited for having on board a Fort Lauderdale-Tampa flight an out-of-date portion of the carrier's operations manual dealing with gross takeoff weight.

DOT, in its order announcing the investigation, said that recent activities of Texas Air and its carriers — especially Continental and Eastern — "raise questions concerning whether the carriers can and are disposed to comply with the safety and economic rules applicable to air carriers." Burnley said that he originally had ordered an in-depth review of Texas Air's and Eastern's finances in connection with the application of Air-Shuttle Limited Partnership for a fitness certificate separate from Eastern's. Texas Air later was ordered to withdraw the application by a federal judge, so "the review must now be conducted through another process," Burnley said.

Burnley said he ordered the earlier investigation "because of concern that this transaction, together with a series of earlier transfers of Eastern Airlines assets, might have an adverse impact on the airline's viability." DOT's policy office recently submitted a report to Burnley that documents "substantial, increasing financial pressure" on Texas Air, "having suffered record losses since the beginning of 1987." Texas Air's recent filing at the Securities and Exchange Commission further revealed the extent of the carrier's financial problems, Burnley said.

A major focus of the fitness investigation will be the intra-company transactions that may have weakened Eastern financially. For example, Texas Air, according to DOT, moved Eastern's computer reservations system into a separate subsidiary in exchange for a note worth less than the system's face value. Texas Air also charges both Continental and Eastern "substantial" fees for management services, fuel purchases and other activities. Texas Air agreed to reimburse Eastern $16 million for expenses incurred during the Texas Air-Eastern acquisition, but Eastern to date has received no cash and holds a non-interest-bearing note. Eastern in March 1987 purchased unsecured notes issued by a Continental affiliate for fair market value of $25 million, but the transaction "would not benefit Eastern's cash position," said DOT, nor did a $22.5 million payment from Eastern to Continental in December in connection with Continental's agreement to operate services for Eastern in the event of a strike.

Such transactions "run the risk of weakening the airline subsidiaries," said DOT, especially in light of large losses, estimated at $258 million alone for Continental last year. Department described its action as an "informal, non-adjudicatory, fact-finding investigation" that could form the basis for recommendations for further action by DOT, by Congress or by the carriers themselves. Investigation will be non-public and be run under the direction of DOT Deputy General Counsel Rosalind Knapp.

EASTERN SAYS IT HOPES INVESTIGATION WILL END SCARE TACTICS

Eastern President Phil Bakes yesterday said he hopes the investigations announced by DOT and FAA will bring an "end to behind-the-scenes lobbying, an end to media manipulation, an end to the scare tactics used against our passengers." The $823,500 fine announced yesterday by FAA stems from the agency's February report which recognized corrective actions Eastern has taken since its original investigation two years ago when Eastern was fined $9.5 million, Bakes said.

Bakes said he believes the current union "safety" campaign has resulted in "harsher FAA standards at Eastern" than at other carriers recently fined for maintenance violations. He said that while other airlines have been fined as little as $1.25, $2.75 or $16.67 per landing or flight, Eastern has been charged several hundred dollars per landing. "If USAir or Northwest were fined at the same rate, they would have paid $121 million and $27.5 million, respectively. Pan Am would have been fined $45 million. At the very least, FAA should adhere to a policy of consistency in assessing fines for the same violations." An FAA spokesman said USAir was fined $666,000 and Pan Am $1.95 million. Northwest said it had not been told how much it will be fined.

Bakes said Eastern, since the first fine, has made "enormous progress" in increasing its safety margins, including the investment of $15 million in an airworthiness directive reconfirmation program, "the only major airline to ever undertake such a program." It also has reduced the number of daily open minimum equipment list items by 38% through last October, further reduced them by 35% now, and averages less than one per airplane, "one of the best records in the industry." COPYRIGHT © 1988 McGRAW-HILL, INC.

EXHIBIT E

interoffice correspondence

EASTERN

TO: Mr. J. L. McNary
ADDRESS: MCIML

FROM: P. J. Anson
ADDRESS: MCIML
EXTENSION: 2351

SUBJECT: Termination

DATE: September 18, 1987

On September 17, 1987 you were the Lead Mechanic responsible for having a cockpit windshield replaced on Aircraft 804 which was scheduled to depart Kansas City at 1829 as Flight 522. When I left the airport at approximately 1700 the windshield replacement had progressed to the point where an on-time departure of Flight 522 was anticipated.

Subsequent to my departure from the airport the ETC on the windshield replacement was changed by you from 1829 to 2015. I arrived at the airport at approximately 1915 to determine why the airplane would not be ready until 2015. My investigation revealed that there were no mechanics working on the windshield replacement when I arrived at the airport. You were questioned as to the whereabouts of the mechanics assigned to Aircraft 804. You were unable to tell me where they were. In addition, the attitude you displayed to me and Shift Manager Byron Turkett showed a lack of concern over the delay of Flight 522.

In February, 1987 you were assessed a ten-day disciplinary suspension for encouraging mechanics in Seattle to report alleged safety or procedural violations by Eastern management to the FAA.

Your actions as Lead Mechanic on September 17, 1987 as described above are a serious violation of various employee rules and regulations. Your failure to properly lead and direct your crew resulted in a significant loss of revenue and additional expense to Eastern and inconvenienced our passengers.

In view of the above your employment with Eastern is terminated effective immediately. You are to turn in to me all Company property in your possession, including but not limited to your I-D badge, pass booklets, Company uniform items and keys.

P.J. Anson

P. J. Anson
Manager, Line Maintenance

①

cc: Pat Bray MCIOV
District 100-IAMAW
Walt Green MCISR
David Grosse MCILE
Chuck Pecca
C. R. Seymour ATLMD

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS **DISTRICT 100**

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September 25, 1987

Mr. Lewis G. Law
Secretary
IAMAW-EAL System Board of Adjustment
Eastern Air Lines, Inc.
Hartsfield International Airport
Atlanta, Georgia 30320

Subject: System Board of Adjustment Case 2613-87
Termination of Jeff McNary - MCI/928

Dear Sir:

In accordance with the terms of the Agreement between the International Association of Machinists and Aerospace Workers and Eastern Air Lines, we are submitting the above Case to the System Board of Adjustment.

QUESTION AT ISSUE:
Did the Company comply with all provisions of the controlling Agreement in terminating the employment of J. McNary and was there just cause for such action. If not, what should the remedy be?

STATEMENT OF FACT:
The Company terminated Grievant on 09-18-87.

POSITION OF EMPLOYEE:
Grievant be returned to employment with no loss of active service credits, seniority, and pay, that he or she would have received had he or she remained in continuous employment.

POSITION OF COMPANY:
Presumed to be as contained in Supervisor Anson's letter dated 09-18-87.

Very truly yours,

Roy H. Anderson

Roy H. Anderson
General Chairman

encl.
cc: Vice President Human Resources - EAL
IAMAW Board Member - J. Almasy
Neutral
General Chairman - R. Taylor
Chief Steward - P. Bray

STATEMENT OF
DUANE THRASHER
DISTRICT LODGE 100 REPRESENTATIVE
TO IAM'S PERMANENT FAA COMMITTEE
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
BEFORE THE SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 27, 1988

My name is Duane Thrasher. I represent District 100 on the IAM's Permanent FAA Committee.

I obtained my FAA Airframe and Powerplant license in 1961, and I graduated from Embry Riddle Aeronautic University that year. I have an associate degree in Aviation Maintenance from Miami/Dade Community College. I served four years in the U.S. Air Force, as a radio-communication repairman. I have held an FCC General Radio and Telephone license since 1970. I have been a mechanic for Eastern Air Lines for over 20 years and nearly all of that time has been spent in Line Maintenance as either an electrician, radio repairman, or A&P mechanic.

I first want to stress to this subcommittee that the majority of the aircraft mechanics I work with are reliable and intelligent people, who take a great deal of pride in the career they have chosen. They also take very seriously their responsibilities to the flying public.

The current atmosphere among the Line Mechanics at Eastern Air Lines concerning contact with the FAA is one of fear and intimidation, brought about by management's actions.

Since the winter of 1985-86, when the FAA fined Eastern Air Lines in excess of $9 million, and Lorenzo's Texas Air Corp.'s takeover of Eastern in February 1986, the pressures which the Line Maintenance mechanics are forced to work under have been increased ten-fold. We have been disciplined with time off, terminations, written letters of discipline and verbal threats, more than I can ever remember.

Additional pressure has been brought about by the airline striving to maintain an on-time flight schedule and accomplish needed maintenance. In Miami, where Eastern has its largest maintenance facility, the operation is such that flight crews feel confident that almost anything can be fixed on their aircraft. However, maintenance takes time. And there is not always sufficient ground time between flights to perform the maintenance. This adds to the pressure.

The FAA has instituted new time limit procedures concerning MEL (Minimum Equipment Lists) control items, and insisted that Eastern keep the total MEL's on the fleet to a low level. This means more maintenance must be accomplished on the aircraft between flights, and all of this adds to the pressure.

Lorenzo's Texas Air Corp. has also instituted a policy of paying bonuses to maintenance supervisors who work in stations where on-time performance is at an acceptable level.

Mechanics at Eastern Air Lines have been threatened with termination and in some cases actually fired when management determined that the FAA had been notified. The notice of termination for Kansas City mechanic Ron Adams suggests that he notified the FAA about a logbook item that Manager Anson had signed off. (See Exhibit A.)

Another case of guilt by association also occurred in Kansas City, on November 2, 1987. Kansas City mechanic Steve Posner received a letter of reprimand and a subsequent letter of termination on the same date for the same incident. Mr. Posner, a 19-year Eastern mechanic with 25 letters of commendation to his credit, acted upon the guidelines placed in the Maintenance and Engineering General Manual (The Repeater Program) and was fired for incurring a 75-minute delay. Supporting documents on Eastern Aircraft 801 and its history of number 5 leading edge flap problems are located in Exhibit B. Equally important, Posner's termination, unlike his earlier reprimand, highlighted FAA involvement in the incident and implies that Posner is responsible for the FAA's intervention.

Mechanics also have been fired for other reasons after management was made aware that they had been talking to the FAA. William Heffernan in Miami's Terminal Maintenance Department was terminated for writing maintenance items in the aircraft logbook, which caused a delayed departure. Had the company not needed to make repairs, the departure would not have been delayed.

The current FAA inspection has caused aircraft to be delayed for similar maintenance discrepancies. Why would a mechanic be fired for doing the same thing the FAA Inspectors are being required to do during this special inspection? Are they not both complying with Federal Aviation Regulations and FAA approved maintenance procedures? The reality of the situation is that Mr. Hiffernan was fired due to his recent report to the FAA criticizing Eastern maintenance practices.

The FAA has a "Hotline" (an 800 telephone number) on which violations can be reported. However, it is unsatisfactory because we believe that the system takes too long to respond (10 days on average) and cannot protect callers from harassment. Our union representatives have been told that the system has many holes and leaks, and that Eastern's management would probably find out about the report and cover up the violation before the FAA could act. Even anonymous reports to the FAA can be detected by Eastern management due to their record-keeping as to which mechanics work which aircraft.

Historically, any report by any mechanic to the FAA has never been checked out through the mechanic, but rather through Eastern management or Eastern's FAA liaison people.

New restrictive policies regarding FAA visits have been established as well. Exhibit C contains instructions to Eastern's planning personnel regarding the recording of any contacts with the FAA. I have also included in Exhibit C a letter written by my manager instituting an FAA Activity Report on April 15, 1988, requiring everyone in my department to document on a form any communication they have with an FAA Inspector during the 30-day ramp inspection of Eastern Air Lines aircraft. What should I do? If I fill out the form and my manager does not approve of my discussions with the FAA inspector, I may be disciplined. If I do not comply with my manager's written instructions, I may be disciplined for disobeying him.

Given the present conditions, a person will never have full anonymity. If a name must be released, he or she should be free of all reprimands or reprisals from any federal or other government agency, and from the corporation or business they are connected with or affiliated with. Full consideration must be given to the accepted practice used by corporations or businesses whereby they take disciplinary action under different guises in order to circumvent the true purposes and intent of the law. I urge the passage of H.R. 3812.

EXHIBIT A

interoffice correspondence EASTERN

TO: Ron Adams ADDRESS: MCIML

FROM: Philip J. Anson ADDRESS: MCIMM

EXTENSION: 2361

SUBJECT: TERMINATION DATE: November 3, 1987

On October 29, 1987 you were the mechanic assigned to perform a Daily Service (D/S) check on aircraft 833 which was operating as flight 828. Based upon your inspection of the aircraft you made the following entry in the logbook: "On D/S check found 1" hole 15" up from latch on LT wheel well flying door." You then informed Line Maintenance Foreman S. E. Galvez that it would be necessary to take aircraft 833 out of service because of the 1" hole.

I was advised of the situation by Foreman Galvez whereupon I went to the aircraft and visually inspected the area you had writtern up in the presence of you and Foreman Galvez. The hole I found was approximately the size of a pin hole. I asked you if that was the hole you had written up and you responded that it was. Based upon the size of the hole the aircraft was within limits for service and I so indicated in the logbook.

Shortly afterward aircraft 833 departed as flight 828 nonstop for Orlando. When the flight arrived in Orlando the area you wrote up in the logbook was inspected by an F.A.A. inspector and Maintenance Manager Dick Perkins. They described the hole as a pin hole which was well within limits for service.

Based upon the foregoing and in view of your considerable experience as a line maintenance mechanic I have concluded that your actions on October 29, 1987 represent a deliberate attempt to disrupt the scheduled operation of aircraft 833. This is an extremely serious violation of various Employee Rules and Regulations which the Company cannot tolerate.

In view of the above your employment with Eastern Airlines is hereby terminated effective immediately. You are to turn in to me all property belonging to Eastern Airlines including, but not limited to, employee I.D. badge, pass booklets, parking card, keys and uniform items.

Philip J. Anson

Philip J. Anson

④

cc: Pat Bray MCIOV
District 100, IAM&AW
Walter Callahan MIAML
David Grosse MCILE
C. R. Seymour ATLMD
Bob Taylor

EXHIBIT B

interoffice correspondence

EASTERN

TO: Steve Possner

ADDRESS: MCIML

FROM: Manager, Line Maintenance

ADDRESS: MCIMM

EXTENSION: 2361

SUBJECT: Aircraft 801, Flight 219
Mechanical Delay

DATE: November 2, 1987

On October 29, 1987 we took a 75 minute delay that was totally unwarranted. You were the mechanic assigned to work that flight. There were three log book items wrote up by the crew and one wrote up by you in reference to the # 5 L/E flap. I had you check the # 5 L/E flap for normal operation several times with no trouble found.

It appears that you are personally creating problems to possibly disrupt our Passenger Service and create an unnecessary delay.

Any further job action from you of this nature will be cause for further discipline, up to and including termination.

Philip J. Anson

Philip J. Anson

cc: Walter Callahan
Charlie Seymour
David Grosse
IAM

③

interoffice correspondence **EASTERN**

TO: Steve Possner **ADDRESS:** MCIML

FROM: Manager, Line Maintenance **ADDRESS:** MCIMM
EXTENSION: 2361

SUBJECT: Aircraft 801, # 5 L/E Flap **DATE:** November 2, 1987

In further review of the October 29, 1987 75 minute delay that was totally unwarranted, you were the mechanic assigned to work that flight. I came out to check the aircraft myself with your assistance and found no problem with the # 5 L/E flap. The aircraft departed MCI on October 29, 1987, the F.A.A. then contacted Eastern Airlines maintenance relative to this same problem after the aircraft left MCI. Interesting enough, this was the same aircraft that you had made an unwarranted log book entry on flight 219, October 29th.

It appears that you are personallly creating problems to possibly disrupt our Passenger Service and create an unnecessary delay.

I want to bring to your attention that purposely and intentional grounding or delaying an aircraft on schedule flight is a federal offense. The end result was we took two delays on that aircraft, both at MCI and again at MIA checking out the L/E flap problem. We then changed the # 5 L/E flap actuator precautionary.

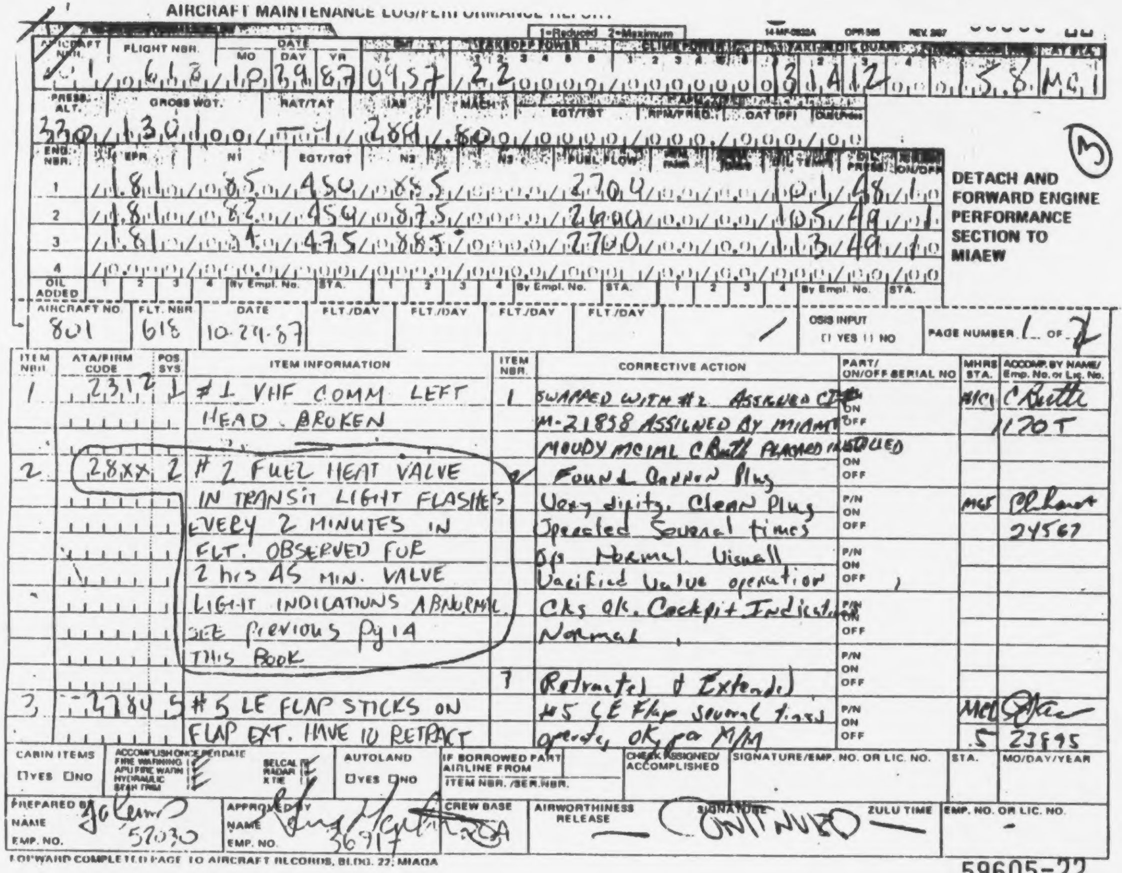
This type of workmanship is not professional and caused a hardship on 50 passengers as well as took away much needed revenue from Eastern Airlines.

Effective immediately, your employment with Eastern Airlines is terminated.

Philip J. Anson

cc: Walter Callahan
Charlie Seymour
David Grosse
IAM
Personnel File

3



AIRCRAFT MAINTENANCE LOG/PERFORMANCE REPORT

1=Reduced 2=Maximum

14-MF-0532A OPR 365 REV. 287

AIRCRAFT NBR.	FLIGHT NBR.	DATE MO	DAY	YR	[illegible]	TAKEOFF POWER	CLIMB POWER	[illegible]	[illegible]	[illegible]	[illegible]
01	0618	10	29	87	0957	22 0000	000000	0 3 1 A 12	00	03.8	MC 1

PRESS. ALT.	GROSS WGT.	RAT/TAT	IAS	MACH	EGT/TGT	RPM/FREQ.	OAT (PF)	[illegible]
330	130100	-1	289	.800	0000	000	000	00

ENG. NBR.	EPR	N1	EGT/TGT	N2	N3	FUEL FLOW	[illegible]	[illegible]	OIL TEMP	OIL PRESS	ON/OFF
1	1.810	085.0	450	088.5	000.0	2704	0.0	0.0	101	48	1.0
2	1.810	082.0	454	087.5	000.0	2600	0.0	0.0	105	49	01
3	1.810	[illegible]	475	088.5	000.0	2700	0.0	0.0	113	49	1.0
4	0.000	000.0	000	000.0	000.0	0000	0.0	0.0	000	00	00

OIL ADDED	1	2	3	4	By Empl. No.	STA.	1	2	3	4	By Empl. No.	STA.	1	2	3	4	By Empl. No.	STA.

Ⓜ

DETACH AND FORWARD ENGINE PERFORMANCE SECTION TO MIAEW

AIRCRAFT NO	FLT. NBR	DATE	FLT./DAY	FLT./DAY	FLT./DAY	FLT./DAY		OSIS INPUT	PAGE NUMBER
801	618	10-29-87					/	( ) YES ( ) NO	1 OF 2

ITEM NBR	ATA/FIRM CODE	POS. SYS.	ITEM INFORMATION	ITEM NBR.	CORRECTIVE ACTION	PART/ ON/OFF SERIAL NO	MHRS STA.	ACCOMP. BY NAME/ Emp. No. or Lic. No.
1	2312	1	#1 VHF COMM LEFT	1	SWAPPED WITH #2 ASSIGNED CTF	ON	MC1	C Butte
			HEAD. BROKEN		M-21858 ASSIGNED BY MIAMI	OFF		1120T
					MOODY MCIML C Butte PLACARD INSTALLED	ON OFF		
2	28XX	2	#2 FUEL HEAT VALVE		Found Cannon Plug			
			IN TRANSIT LIGHT FLASHES		Very dirty. Clean Plug	P/N ON	MCS	
			EVERY 2 MINUTES IN		Operated Several times	OFF		24567
			FLT. OBSERVED FOR		Op Normal. Visually	P/N ON		
			2 hrs AS MIN. VALVE		Varified Valve operation	OFF		
			LIGHT INDICATIONS ABNORMAL.		Cks OK. Cockpit Indication	P/N ON		
			SEE PREVIOUS Pg 14		Normal.	OFF		
			THIS BOOK			P/N ON		
				7	Retracted & Extended	OFF		
3	2784	5	#5 LE FLAP STICKS ON		#5 LE Flap several times	P/N ON	MCO	
			FLAP EXT. HAVE TO RETRACT		greased, OK per M/M	OFF	.5	23895

CABIN ITEMS	ACCOMPLISH ONCE PER DATE		AUTOLAND	IF BORROWED PART	CHECK ASSIGNED/ ACCOMPLISHED	SIGNATURE/EMP. NO. OR LIC. NO.	STA.	MO/DAY/YEAR
☐ YES ☐ NO	FIRE WARNING ✓ APU FIRE WARN ✓ HYDRAULIC ✓ STAB TRIM ✓	SELCAL ✓ RADAR ✓ X TIE ✓	☐ YES ☐ NO	AIRLINE FROM ITEM NBR. /SER.NBR.				

PREPARED BY	APPROVED BY	CREW BASE	AIRWORTHINESS RELEASE	SIGNATURE	ZULU TIME	EMP. NO. OR LIC. NO.
NAME Jo Kemp EMP. NO. 57030	NAME EMP. NO. 36917	[illegible]	—	CONTINUED	—	-

FORWARD COMPLETED PAGE TO AIRCRAFT RECORDS, BLDG. 22, MIAOA

59605-22

EASTERN
14-MF-0838A OPR-000 REV.

59605-23

FLIGHT NBR.	MO	DAY	YR
618	10	29	87

1=Reduced 2=Maximum

PRESS. ALT. | GROSS WGT. | RAT/TAT | IAS | MACH | EGT/TGT | RPM/FREQ. | OAT (oF) | Duct Press

ENG. NBR.	EPR	N1	EGT/TGT	N2	N3	FUEL FLOW	FAN	TURBO	OIL TEMP.	OIL PRESS.	ON/OFF
1											
2											
3											
4											

OIL ADDED 1 2 3 4 By Empl. No STA. 1 2 3 4 By Empl. No. STA. 1 2 3 4 By Empl. No. STA.

③

DETACH AND FORWARD ENGINE PERFORMANCE SECTION TO MIAEW

AIRCRAFT NO	FLT NBR	DATE	FLT./DAY	FLT./DAY	FLT./DAY	FLT./DAY		OSIS INPUT	PAGE NUMBER
801	618	10-29-87					/	☐ YES ☐ NO	2 OF 2

ITEM NBR.	ATA/FIRM CODE	POS. SYS	ITEM INFORMATION	ITEM NBR.	CORRECTIVE ACTION	PART/ ON/OFF SERIAL NO.	MHRS STA.	ACCOMP. BY NAME/ Emp. No. or Lic. No.
3	2784		TO 2° FOR FLAP	③.	Retracted & Extended Several	P/N ON OFF	MCO	
			TO EXTEND & THEN		times definitely OK as		.5	23895
			CONTINUE extension.		per M/M ok for Service	P/N ON OFF		
4	2780		NOTE 9 Previous. Write	④	Noted OK for	P/N ON OFF	MCO	
			UPS ON #5 LE. FLAP		Service			23895
			Ref #3 CN 59605-22			P/N ON OFF	.5	
						P/N ON OFF		
						P/N ON OFF		
						P/N ON OFF		

CABIN ITEMS	ACCOMPLISH ONCE PER DATE		AUTOLAND	IF BORROWED PART AIRLINE FROM ITEM NBR. /SER.NBR.	CHECK ASSIGNED/ ACCOMPLISHED	SIGNATURE/EMP. NO. OR LIC. NO.	STA.	MO/DAY/YEAR
☐ YES ☐ NO	FIRE WARNING ☐ APU FIRE WARN ☐ HYDRAULIC ☐ STAB TRIM ☐	SELCAL ☐ RADAR ☐ X TIE ☐	☐ YES ☐ NO					

PREPARED BY NAME / EMP. NO.	APPROVED BY NAME / EMP. NO.	CREW BASE	AIRWORTHINESS RELEASE	SIGNATURE	ZULU TIME	EMP. NO. OR LIC. NO.
52070		VCA				-

FORWARD COMPLETED PAGE TO AIRCRAFT RECORDS, BLDG. 22: MIAQA

59605-23

AIRCRAFT MAINTENANCE/PERFORMANCE LOG REPEATER PROGRAM

1. General

A. The Repeater Program is designed to:

(1) Identify aircraft discrepancies that, because of their intermittent occurrence, may not have been conclusively corrected by previous maintenance actions.

(2) Provide a system for the timely correction of identified log repeater items.

(3) Comply with the requirements of FAR 121.373.

B. This program supplements and does not detract from a mechanic's and/or supervisor's responsibility to review a log or historical information for repeater items relative to the work he is performing. It is not intended as a substitute for log reviews performed as part of scheduled checks.

2. Responsibilities and Procedures

A. Reliability Engineering shall:

(1) Establ[illegible] and maintain procedures for computer entry of data from [illegible]llow copy) of Aircraft Log Sheets.

(a) [illegible]ocedure to specify entry be accomplished daily.

(b) [illegible]rocedure to specify data to be entered.

(2) Produce a computer report listing:

(a) Each aircraft that has accumulated a third repeat log write-up, against the same ATA chapter/number, within the ten (10) previous calendar days. (Candidate F-Items).

B. Technical Services shall:

(1) Conduct surveillance of aircraft log repeater items.

(2) Identify and generate repeater problem control items (F-Items), as appropriate, in response to data included in "ATA Six-Digit Alert" reports.

WE NO LONGER HAVE SIX DIGIT

5

```
[illegible]                                                   [illegible]
[illegible]: #5 L/E FLAP SLOW [illegible] EXTEND
CORR ACTN: CLEANED CANNON PLUG OPERATED SEVERAL TIMES WORKS NORMAL THIS
STE AND RTE.
```

WHO SIGNED OFF

4

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[illegible]                                                   [illegible]
ITEM INFO: #5 L/E FLAP INTRANSIT LIGHT ON FOR 2 MINUTES BEFORE GETTING GREEN
INDICATION ON APPROACH TO FLL?
CORR ACTN: LUBRICATED LINKAGE TO #5 L/E FLAP POS. IND. SW. OPERATED FLAPS
NUMEROUS TIMES L/E SLAT OPERATION NORMAL
```

3

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[illegible]                                                   [illegible]
ITEM INFO: #5 L/E FLAP WOULD NOT COME DOWN UNTIL A/C SLOWED UP
CORR ACTN: REPLACED #5 L/E FLAP [illegible]
 PART NUMBER      ON SERIAL NBR   OFF SERIAL NBR   AL
77AC0320          4254            [illegible]
```

ACTUATOR #5 FLAP

```
CURRENT DATE: [illegible]          [illegible]                      PAGE: [illegible]
AC NBR: 5[illegible]      [illegible]                  [illegible]     DATES: [illegible]
                  -----------[illegible]-------------  -----------[illegible]-----------
[illegible]
ITEM NBR  CODE  SYS  [illegible]  NBR NBR  [illegible]      NBR   NBR NBR  STA  [illegible]
```

2

```
        [illegible]                                    [illegible]
ITEM INFO: #5 KREUGER FLAP DIDN'T SHOW RETRACTED WHEN FLAPS BROUGHT TO
0 DEGREES AMBER LITE IN BOTH PANELS [illegible] FLAPS RETRACTED TO 5
CORR ACTN: OPERATED FLAPS SEVERAL TIMES FLAPS AND LIGHTS OPERATED
NORMAL
```

1

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        [illegible]                                    [illegible]
ITEM INFO: #5 LE FLAP AMBER LIGHT CAME ON DURING CLIMBOUT UPON APPLICATION
OF WING ANTI-ICE.
CORR ACTN: R&R'D #5 FLAP LIGHT SW. [illegible]
 PART NUMBER      ON SERIAL NBR   OFF SERIAL NBR   AL
[illegible]
```

SWITCH

```
        [illegible]                                    [illegible]
ITEM INFO: [illegible] FLAP TRANSMISSION AT WING [illegible] FLAP IS LEAKING FLUID &
[illegible] HANGING [illegible]
CORR ACTN: [illegible]
[illegible] WING [illegible] FLAP.
        [illegible]                                    [illegible]   SUS   [illegible]/87
ITEM INFO: [illegible] DN 59925[illegible]
CORR ACTN: [illegible] FUEL [illegible]
[illegible] AT THIS TIME
        [illegible]                                    59925 [illegible]   MIA   0?/11/87
ITEM INFO: UPPER RUDDER [illegible]
CORR ACTN: [illegible] UPPER RUDDER BY ADJUSTING VALVE ROD ON POWER PACKAGE
        [illegible]                                    59925 [illegible]   MIA   0?/10/87
ITEM INFO: [illegible]
CORR ACTN: CHANGED [illegible] FLAP POS [illegible] PRECAUTIONARY [illegible]
 PART NUMBER      ON SERIAL NBR   OFF SERIAL NBR   AL
221N0764          [illegible]     [illegible]
        [illegible]                                    59925 [illegible]   MIA   [illegible]
ITEM INFO: [illegible]
8
CORR ACTN: REPLACED [illegible] FLAPS [illegible] IN ACCO
[illegible] PROCEDURE DETAILED IN [illegible] FOR FURTHER MAINT. TO TRAIL
ING EDGE SYS (CONT)
 PART NUMBER      ON SERIAL NBR   OFF SERIAL NBR   AL
77A00702          [illegible]     [illegible]
```

9

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ITEM INFO: DURING FLAP EXTENSION FOR LANDING. #5 LED FAILED TO EXTEND. AMBER L         10/24/87
ON FWD PANEL [illegible] AFTER @ 5 MIN. THE LED MOVED INTO
[illegible] CYCLED OK ON GRD. NOTE: THERE WAS [illegible] DURING FLA
EXTENSION.
CORR ACTN: [illegible] FLAPS & SLATS CKD LEADING EDGE SWITCHES FOR SECUTITY ALL LITES
& INDICATIONS NORMAL
[illegible]

CURREN[illegible]
[illegible]
        278400
ITEM INFO: #5 LE FLAP SLOW TO MOVE TO EXTENDED POSITION AFTER                 09/27/87
SELECTING 5 DEG [illegible] A FULL MIN [illegible] 20 SECS [illegible] PREVIOUS WRITE UPS
CORR ACTN: UNABLE TO DUPE. [illegible] OPS [illegible] CAUTIONARY
                      ON SERIAL [illegible]
221N0788
        275200
ITEM INFO: LE FLAPS WOULD NOT EXTEND NORMALLY HAS TO USE ALT FLAPS EXTENSION
(#5 LE FLAP VERY SLOW TO EXTEND)
CORR ACTN: REPLACED O/B FLAP IND OPER CKD LE/TE FLAPS CKD OK VISUALLY [illegible]
& T/E FLAPS FOR SECURITY LOCK OK
        275620
ITEM INFO: OUTBD TRAILING FLAPS FAILED TO EXTEND UN LANDING.      59931 [illegible] 02   MIA 09/25/87
CORR ACTN: ALT FLAP EXTENSION OK ON VISUAL [illegible] FLAP CKD GOOD (REF ITEM 1
ABOVE)  REPLACED INDICATOR OPS CK GOOD.
        275630
ITEM INFO: ON TAKEOFF, ST. THOMAS. 250H FLAPS. POWER WAS ADVANCED TO 1.4 EPR B   59951 25 05   MIA 09/22/87
EFORE BRAKE RELEASE. T/O WARNING HORN SOUNDED
CORR ACTN: ADJUSTED FLAP T/O WARNING SWITCH AS PER MM 27-50-25 PG. 401
        275100
ITEM INFO: RE: PREVIOUS PAGE #5 L/E FLAP STILL SLOW TO EXTEND.     59951 16 01   ORD 09/16/87
CORR ACTN: REPLACED #5 SLAT ACTUATOR AND LEAKED CHECKED.
 PART NUMBER        ON SERIAL NBR      OFF SERIAL NBR    AL
77AC0323            59785,                   467
        275100
ITEM INFO: [redacted]                                              59951 15 01   ALI 09/16/87
CORR ACTN:
DATE AND STA.
        275600                                                     59931 07 04   FLL 09/16/87
```

REF INDICATOR

#5 SLAT actuator

8

5

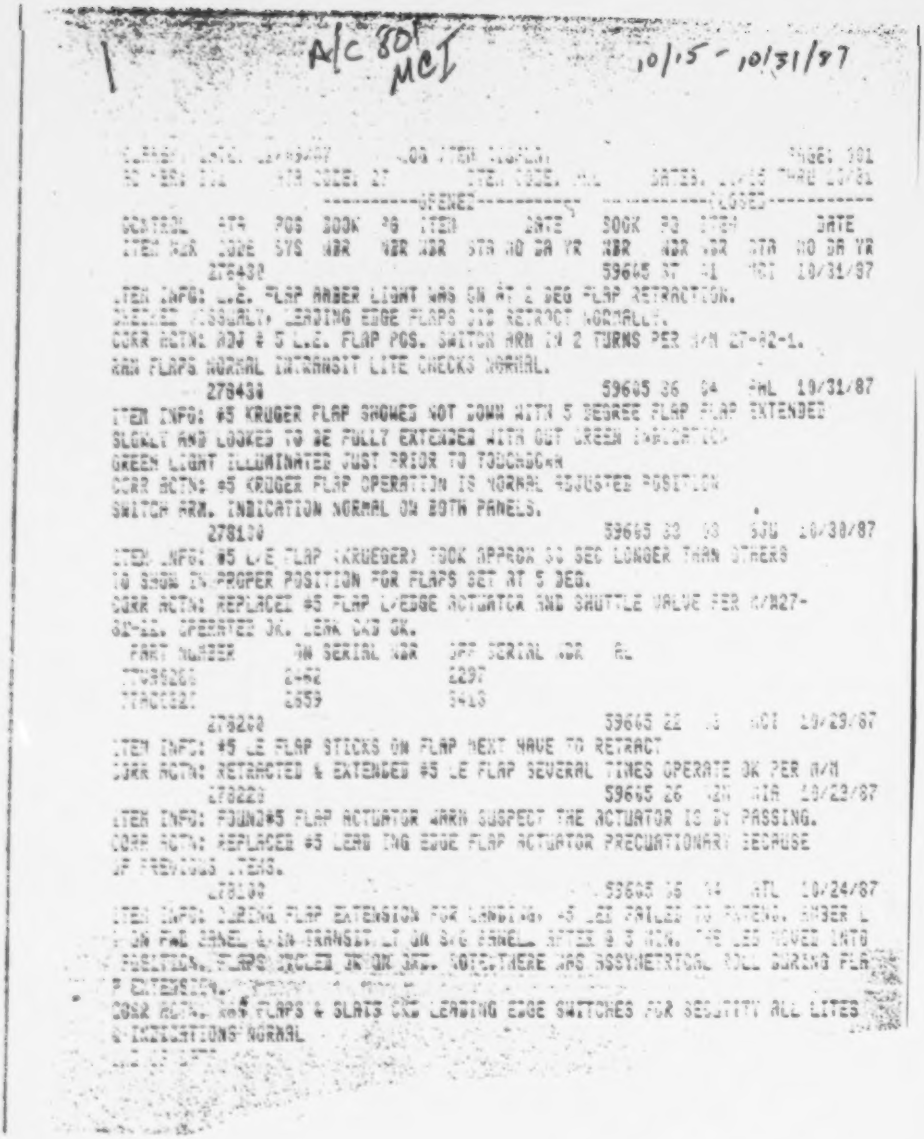
6

5

4

3

```
13          278000                                    59605 36  04   PHL  10/31/87
ITEM INFO: #5 KRUGER FLAP SHOWED NOT DOWN WITH 5 DEGREE FLAP FLAP EXTENDED
SLOWLY AND LOOKED TO BE FULLY EXTENDED WITH OUT GREEN INDICATION
GREEN LIGHT ILLUMINATED JUST PRIOR TO TOUCHDOWN
CORR ACTN: #5 KRUGER FLAP OPERATION IS NORMAL ADJUSTED POSITION
SWITCH ARM. INDICATION NORMAL ON BOTH PANELS.
12          270000                                    59605 37  01   MCI  10/31/87
ITEM INFO: L.E. FLAP AMBER LIGHT WAS ON AT 2 DEG FLAP RETRACTION.
CHECKED VISSUALY. LEADING EDGE FLAPS DID RETRACT NORMALLY.
CORR ACTN: ADJ # 5 L.E. FLAP POS. SWITCH ARM IN 2 TURNS PER M/M 27-82-1.
RAN FLAPS NORMAL-IN TRANSIT LITE CHECKS NORMAL.
11          273000                                    59605 33  03   BJU  10/30/87
ITEM INFO: #5 L/E FLAP (KRUEGER) TOOK APPROX 30 SEC LONGER THAN OTHERS
TO SHOW IN PROPER POSITION FOR FLAPS BE AT 5 DEG.
CORR ACTN: REPLACED #5 FLAP L/EDGE ACTUATOR AND SHUTTLE VALVE PER M/M27-
81-22. OPERATED OK. LEAK CKD OK.
   PART NUMBER         ON SERIAL NBR    OFF SERIAL NBR   AL
   27VA0288              2462             2297
   27AC0320              2359             8413
  TLII: AC NBR:  801 / ITEM TYPE:  . / A A CODE:  27       /
                             -----------OPENED-----------   -----------CLOSED-----------
   CONTROL    ATA    POS  BOOK   PG  ITEM      BY DATE      BOOK   PG  ITEM       BY DATE
   ITEM NBR   CODE   SYS  NBR    NBR NBR   STA  MO DA YR    NBR    NBR NBR   STA  MO DA YR
10          270000                                    59605 26  02M  MIA  10/29/87
ITEM INFO: FOUND #5 FLAP ACTUATOR WARM SUSPECT THE ACTUATOR IS BY PASSING.
CORR ACTN: REPLACED #5 LEAD ING EDGE FLAP ACTUATOR PRECAUTIONARY BECAUSE
OF PREVIOUS ITEMS.
9           270000                                    59605 26  01M  MIA  10/29/87
ITEM INFO: PER PREVIOUS LOG ITEMS PG 59605-22 CK #5 LEADING EDGE FLPA FOR
PROPER OPERATION
CORR ACTN: OPERD FLAPS SEVERAL TIMES FOUND OPER.NORMAL DUE TO PREVIOUS ITEMS
SEE ITEM #2 THIS PAGE
            278000                                    59605 23  04M  MCI  10/29/87
ITEM INFO: NOTE 9 PREVIOUS WIGHT UPS ON #5 LE FLAP REF #3 ON 59605-22
CORR ACTN: NOTED OK FORE SERVICE
            278000                                    59605 23  03   MCI  10/29/87
ITEM INFO: TO 2 DEG FOR FLAP TO EXTEND THEN CONTINUE EXTENSON
CORR ACTN: RETRUNED & EXTNED SEVERAL TIMES OPERATE OK AS PER M/M OK FORE SERVI
CE
            278000                                    59605 22  03   MCI  10/29/87
ITEM INFO: #5 LE FLAP STICKS ON FLAP [illegible]. HAVE TO RETRACT
CORR ACTN: RETRACTED & EXTENDED #5 LE FLAP SEVERAL TIMES OPERATE OK PER M/M
  TLII: AC NBR:  801 / ITEM TYPE:  . / A A CODE:  27
                             -----------OPENED-----------   -----------CLOSED-----------
   CONTROL    ATA    POS  BOOK   PG  ITEM      BY DATE      BOOK   PG  ITEM       BY DATE
   ITEM NBR   CODE   SYS  NBR    NBR NBR   STA  MO DA YR    NBR    NBR NBR   STA  MO DA YR
            278100                                    59605 06  04   ATL  10/24/87
ITEM INFO: DURING FLAP EXTENSION FOR LANDING, #5 LED FAILED TO EXTEND. AMBER L
T ON FWD PANEL & IN TRANSIT LT ON S/O PANEL. AFTER @ 5 MIN. THE LED MOVED INTO
POSITION. FLAPS CYCLED OK ON GRD. NOTE THERE WAS ASSYMETRICAL ROLL DURING FLA
P EXTENSION.
CORR ACTN: RAN FLAPS & SLATS CKD LEADING EDGE SWITCHES FOR SECUTITY ALL LITES
& INDICATIONS NORMAL
            273600                                    61599 04  05M  MIA  10/09/87
ITEM INFO: COMPLETE INSTALLATION OF ELEVATOR FEEL COMPUTER PER MM 27-30-101 P2
06 REF #3M [illegible] 62944 [illegible]
CORR ACTN: COMPLETED INSTALLATION OF ELEVATOR FELL COMPUTER PER MM 27-30-101 [illegible]
NO B727-27[illegible]
[illegible]
[redacted]
```



A/C 801 MCI

10/15 - 10/31/87

```
CURRENT [illegible]               LOG ITEM DISPLAY                          PAGE: 101
AC NBR: 801     ATA CODE: 27       ITEM CODE: ALL      DATES: 10/15 THRU 10/31
                ----------OPENED-----------   -----------CLOSED----------
CONTROL   ATA  POS  BOOK  PG  ITEM        DATE    BOOK  PG  ITEM         DATE
ITEM NBR  CODE SYS  NBR   NBR NBR   STA MO DA YR  NBR   NBR NBR   STA  MO DA YR
      278430                                      59645 37  41    MCI  10/31/87
ITEM INFO: L.E. FLAP AMBER LIGHT WAS ON AT 2 DEG FLAP RETRACTION.
CHECKED VISUALLY, LEADING EDGE FLAPS DID RETRACT NORMALLY.
CORR ACTN: ADJ # 5 L.E. FLAP POS. SWITCH ARM IN 2 TURNS PER M/M 27-82-1.
RAN FLAPS NORMAL INTRANSIT LITE CHECKS NORMAL.
      278430                                      59605 36  04    PHL  10/31/87
ITEM INFO: #5 KRUGER FLAP SHOWED NOT DOWN WITH 5 DEGREE FLAP FLAP EXTENDED
SLOWLY AND LOOKED TO BE FULLY EXTENDED WITH OUT GREEN INDICATION
GREEN LIGHT ILLUMINATED JUST PRIOR TO TOUCHDOWN
CORR ACTN: #5 KRUGER FLAP OPERATION IS NORMAL ADJUSTED POSITION
SWITCH ARM. INDICATION NORMAL ON BOTH PANELS.
      278130                                      59665 33  03    SJU  10/30/87
ITEM INFO: #5 L/E FLAP (KRUEGER) TOOK APPROX 30 SEC LONGER THAN OTHERS
TO SHOW IN PROPER POSITION FOR FLAPS SET AT 5 DEG.
CORR ACTN: REPLACED #5 FLAP L/EDGE ACTUATOR AND SHUTTLE VALVE PER M/M27-
81-11. OPERATED OK. LEAK CKD OK.
 PART NUMBER      ON SERIAL NBR   OFF SERIAL NBR   RL
 [illegible]          2462            2297
 [illegible]          2659            5413
      278200                                      59665 22  [illegible]  MCI  10/29/87
ITEM INFO: #5 LE FLAP STICKS ON FLAP NEXT HAVE TO RETRACT
CORR ACTN: RETRACTED & EXTENDED #5 LE FLAP SEVERAL TIMES OPERATE OK PER M/M
      278220                                      59665 26  12N   AIR  10/28/87
ITEM INFO: FOUND#5 FLAP ACTUATOR WARN SUSPECT THE ACTUATOR IS BY PASSING.
CORR ACTN: REPLACED #5 LEAD ING EDGE FLAP ACTUATOR PRECAUTIONARY BECAUSE
OF PREVIOUS ITEMS.
      278100                                      59605 15  14    ATL  10/24/87
ITEM INFO: DURING FLAP EXTENSION FOR LANDING, #5 LED FAILED TO EXTEND. AMBER L
T ON F/E PANEL & IN TRANSIT LT ON S/O PANEL AFTER 2 3 MIN. THE LED MOVED INTO
POSITION. FLAPS CYCLED IN OK OK. NOTE:THERE WAS ASSYMETRICAL ROLL DURING FLA
P EXTENSION. [illegible]
CORR ACTN: RAN FLAPS & SLATS CKD LEADING EDGE SWITCHES FOR SECURITY ALL LITES
& INDICATIONS NORMAL
[illegible]
```

```
  T[illegible] AC NBR:  891 / ITEM TYPE:  . / ATA CODE:  27
                          -----------OPENED-----------  -----------CLOSED-----------
   CONTROL   ATA   POS  BOOK  PG  ITEM         DATE    BOOK  PG  ITEM          DATE
   ITEM NBR  CODE  SYS  NBR   NBR NBR  STA MO DA YR   NBR   NBR NBR  STA  MO DA YR
           270000                                      61889 09  22M  MIA  11/04/87
  ITEM INFO: LEFT STAB TRIM MOTOR REMVOED
  COPR ACTN: MTOOR INSTALELD OPS CHECK GOOD
           270000                                      61889 06  21M  MIA  11/04/87
  ITEM INFO: RETURN RIGN PIN KIT TO SR 520
  CORR ACTN: REUTRNED TO SR 520
           270000                                      61889 06  20   MIA  11/04/87
  ITEM INFO: RETURN CABLE TENSION METER TO SR 520
  CORR ACTN: REUTRNED TO SR 520
           270000                                      61889 01  04   MIA  11/04/87
  ITEM INFO: PITCH TRIM BADING WHEEL DOES NOT TURN AT A CONSTANT SPEED HAS A
  CERTAIN AMOUNT OF BACKTRIM WHEN RELEASED
  CORR ACTN: REPLACED STAB TRIM CABLES SEE ITEM 6M PG 2
           270000                                      61889 03  09M  MIA  11/04/87
  ITEM INFO: REF ITEM #4 PG 1: CHANGE PRIMARY HORIZ STAB ACTUATOR AS PRECAUTION
  CORR ACTN: CHGD PRI HORIZ STAB TRIM ACTUATOR ACCOMP CK OUT OF SYS WITH ELECT T
  EST BOX ALL CK NORMAL
   PART NUMBER       ON SERIAL NBR   OFF SERIAL NBR   AL
  33AC0256          347607AA         026027A
  T[illegible] AC NBR: 891   ITEM TYPE:  . / ATA CODE:  27
                          -----------OPENED-----------  -----------CLOSED-----------
   CONTROL   ATA   POS  BOOK  PG  ITEM         DATE    BOOK  PG  ITEM          DATE
   ITEM NBR  CODE  SYS  NBR   NBR NBR  STA MO DA YR   NBR   NBR NBR  STA  MO DA YR
           270000                                      61889 03  07M  MIA  11/04/87
  ITEM INFO: REF IEM 6M LEFT ACC PANE TO CRUISE TRIM MOTOR REMOVED FROM VERT STA
  B
  CORR ACTN: CLOSED LEFT ACCESS PANEL TO CRUISE TRIM MOTOR VERT TAIL
           270000                                      61889 04  10M  MIA  11/04/87
  ITEM INFO: RT ACCESS PANEL OPEN ON VERT STAB TO JACK SCREW
  CORR ACTN: CLOSED ACCESS PANEL RT SIDE VERT FIN TO JACKSCREW
           270000                                      61889 02  06   MIA  11/04/87
  ITEM INFO: REF ITEM 4 PREV LOG PG #1 (CRUISE TRIM OPERATION ERRATIC AND WHEN C
  RUISE TRIM SW RELEASED SURFACE CONT. TO TRIM IN A NOSE DOWN DIRECTION REGARDLE
  SS OF PREV TRIM DIRECTED) AP ACCY UNIT REPL NC HELP
  CORR ACTN: FOUND STAB TRIM CABLES LOW ON TENSION REPLACED CABLES & RIGGED AS P
  ER FORMS  B757-2745A & 14ME2704B
           278430[illegible]                              59605 3[illegible]
  ITEM INFO: #5 KRUGER FLAP SHOWED [illegible] DEGREE [illegible]
  SLOWLY AND LOOKED TO BE FULLY EXTENDED [illegible]
```

```
        278431                                      59605 38  04  [illegible]
ITEM INFO: #5 KRUGER FLAP SHOWED NOT DOWN WITH 5 DEGREE FLAP FLAP EXTENDED
VISUALLY AND LOOKED TO BE FULLY EXTENDED WITH OUT GREEN INDICATION
GREEN LIGHT ILLUMINATED JUST PRIOR TO TOUCHDOWN
CORR ACTN: #5 KRUGER FLAP OPERATION IS NORMAL ADJUSTED POSITION
SWITCH ARM. INDICATION NORMAL ON BOTH PANELS.
 [illegible] NBR:  [illegible] / ITEM TYPE:  . / ATA CODE:  27     /
                    ----------OPENED----------  ----------CLOSED----------
 CONTROL  ATA  POS  BOOK  PG  ITEM       DATE   BOOK  PG  ITEM       DATE
 ITEM NBR CODE SYS  NBR   NBR NBR  STA MO DA YR NBR   NBR NBR  STA MO DA YR
        278430                                  59605 37  01   MCI 10/31/67
ITEM INFO: L.E. FLAP AMBER LIGHT WAS ON AT 2 DEG FLAP RETRACTION.
CHECKED VISSUALY, LEADING EDGE FLAPS DID RETRACT NORMALLY.
CORR ACTN: ADJ # 5 L.E. FLAP POS. SWITCH ARM IN 2 TURNS PER M/M 27-82-1.
RAN FLAPS NORMAL-INTRANSIT LITE CHECKS NORMAL.
END OF DATA
```

EXHIBIT C

All Schedulers:

1. FAA inspectors will be here in maintenance doing a follow-up check on the AD's we accomplished earlier this year. Will probably be 2 weeks.

2. The forms and a list of Eastern contacts for the following FAA INSP. will be put in each working booth.

A. FAA Activity Report.

This form to be used when contacted by any FAA individual that engages you in any conservation, discussion of ACFT particulars, or paperwork duplications. * It is very important that all planning personnel notify immediately the line MGR or work MGR working that line – what the FAA inspector is requesting from you.

B. FAA Document/Record Request Form.

This form will be made out for any and all requests made by FAA for copies of any paperwork. FAA inspector will fill out top of form and we will comply with the bottom section.

* When filling out the forms. Be specific on what they want and what is given to them.
Make an extra copy of all items given to the FAA and put in Medina's incoming box in the Tree House.

W. Ford
For W. Medina

interoffice correspondence

EASTERN

TO: All Mgt Personnel & Leads

FROM: Mgr Terminal Maintenance

SUBJECT: F.A.A. Activity Report

ADDRESS: MIAML

ADDRESS: MIAML
EXTENSION: 7925
DATE: April 15, 1988

Effective immediately, all F.A.A. activity on our Ramp is to be recorded on a scratch pad available on the computer. The transaction is, JXSSTC Report. A copy of this is to be attached to the delay report.

It is imperative that the Inspector/Inspectors be identified by name and that the information required on the form is factual and concise.

Familiarize yourself with the attached form as compliance with this memo is mandatory.

S.A. Slusarczyk

SAS/mp

cc: H. Alvarez
W. Callahan
C. Seymour

```
.@QP MIAQA MIASS MIASR MIAMT MIALS DOMSJ ...MD MIADP
......
        30 DAY RAMP INSPECTION OF EAL AIRCRAFT
STA  ... DATE ../../..  TIME ....Z  A/C NO .... DLA/CNX MINS ....
FAA INSP NAME .......................      FLT NO: ..........
EAL MGT INVOLVED ................EXT ......HOME PH (...)........
MAINT PERSONNEL, NAMES ...............................EXT .....
DISCREPANCY REPORTED ..........................................
...............................................................
...............................................................
CORRECTIVE ACTION .............................................
...............................................................
...............................................................
PRIOR/INPROCESS MAINT AT TIME OF INSP .........................
...............................................................
...............................................................
SCHEDULED MAINT TO HAVE BEEN ACCOMPLD .........................
...............................................................
WOULD.SCHD.MAINT.HAVE.FOUND.DISCREPANCY .......................
RECORDED ON LOG SHEETS .....-.. THRU .....-..
ANY FAVORABLE FAA COMENTS .....................................
...............................................................
TR
 @QP MIAQA MIASS MIASR MIAMT MIALS DOMSJ ...MD MIADP
......
STA  ... DATE ../../.. A/C NO ......  FLT NO ........

ADDITIONAL INFORMATION ...........................
..................................................
..................................................
..................................................
DID FAA REQUEST COPIES OF ANY DOCUMENTS: YES ... NO ..
DESCRIPTION ......................................
..................................................
HOW DOCUMENTS HAVE BEEN SENT VIA FAX ....FED EXPR ....
FAX ALL REQUESTED COPIES BY FAA TO: (305)873-6957 OR
(305) 873-2164. IF FAX IS NOT AVAIBLE SEND VIA
      FEDERAL EXPRESS PRIORITY 1 NEXT DAY
        TO: EASTERN AIRLINES
            MIAMI INT AIRPORT
            MIAMI, FL 33148
            ATTN:JOHN KEYSER  BLDG 22  RM 200
THIS MSG TO BE TRANSMITTED IMMEDIATELY UPON FAA CONTACT
AND DAILY BY 0900 EVEN IF NO FAA ACTIVITY.
SIGNED .................. DATE ../../.. EXT .......
```

STATEMENT OF
WILLIAM HEFFERNAN
MECHANIC, DISTRICT LODGE 100
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
BEFORE THE SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 27, 1988

My name is Bill Heffernan. I was employed by Eastern Air Lines as an Aircraft Electronics Mechanic for fifteen years. Recently I was fired unjustly by Eastern Air Lines. Today, Eastern, under the leadership of Frank Lorenzo's Texas Air Corp., puts tremendous pressure upon mechanics to discourage any action which can cause an aircraft delay. For example, maintenance foremen get bonuses for on-time departures. I am a victim of this pressure philosophy.

I include with my testimony a copy of my termination letter from Eastern, which briefly states that I violated company rules and regulations by entering maintenance discrepancies in the Aircraft Maintenance Logbook. (_See_ Exhibit A.) These discrepancies caused a delay in the departing flight while repairs were being made.

The discrepancies that I entered in the Logbook were legitimate and did affect the airworthiness of the aircraft. In my termination letter, Eastern claims that the discrepancies were _not_ urgent nor a threat to the safety or airworthiness of the aircraft. I have attached as Exhibit B a copy of the Boeing 727 Aircraft Maintenance Manual which clearly shows that the placards I wrote up were FAA-required. An aircraft is _not_ airworthy if it is missing any FAA-required items. Aircraft are delayed every day of the week to accomplish required repairs, and mechanics are not usually reprimanded or fired for entering maintenance discrepancies in the logbook.

Licensed mechanics at Eastern have the right to report aircraft discrepancies and are morally obligated to do so. The method used is to enter the discrepancy in the Aircraft Maintenance Logbook, where the corrective action is also recorded.

Recently, the FAA has stated that Airframe and Powerplant mechanics, licensed by the FAA, should inform their supervisor prior to entering items in the Logbook. This is a new development and a position contrary to many years' previous practice and experience. In effect, it waters down the mechanic's ability to document discrepancies and the corrective action in any of the numerous approved procedures or repairs. Documentation of discrepancies is important for two reasons: troubleshooting of maintenance and a validation of violations of the FAR's which endanger aviation safety.

I believe that I was fired because I was in contact with FAA Inspectors. I was questioning Eastern's recent actions and trying to determine how Eastern could justify the way they were getting around the FAA's requirements in regard to Category III, Autoland Inspections. The maintenance personnel accomplishing such inspections are required to be certified to do so. Because Eastern still had not accomplished the required training to certify those mechanics, Maintenance Foremen were signing off the accomplishment when if fact they did not accomplish the inspection. Uncertified mechanics did the actual work, contrary to the FAA's requirements. Eastern knew I was unhappy with their decision and that I was in contact with the FAA.

This was not the first time I disagreed with an Eastern management decision on safety grounds. Once I was called into the manager's office and threatened with termination because I insisted on repairing a part of the aircraft interphone system which legally had to be working prior to departure. A maintenance foreman wanted to defer the repairs, which he claimed were not required prior to departure. I proved to the manager that I was right, but I was warned not to try to solve all of Eastern's safety problems singlehandedly.

On another occasion, I was given a letter of reprimand for job performance and attitude after I entered in an Aircraft Logbook, "loose and popped rivets," which were allowing the skin of the aircraft to pull away from the structure. That aircraft took a delay to replace and install 12 over-sized rivets. During the current Eastern inspection, the FAA took a plane out of service on the same grounds: rivets had been pulled loose and the plane's skin was peeling.

These examples illustrate how if any company is allowed to fire, intimidate or harass aircraft mechanics from performing their duties, then the margin of safety will rapidly shrink and the NTSB will be picking through the wreckage caused by the greed and callous behavior of airline management.

In order to protect the flying public, mechanics must have the freedom to contact the FAA to report problems, errors and violations, without fear of being intimidated with the threat of disciplinary action.

As for myself, I am certain that I will be vindicated at my arbitration (unfortunately approximately 18 months away), but in the meantime Eastern's unjustified decision will cause immediate economic problems.

EXHIBIT A

interoffice correspondence EASTERN

TO: W. Heffernan #35502 **ADDRESS:** MIAML

FROM: R. Menke **ADDRESS:** MIAML
EXTENSION: 5330
SUBJECT: Termination **DATE:** March 11, 1988

On Sunday March 6, 1988 flight 907 incurred a delay of over 1 hour which was charged to Miami Maintenance. Upon investigation it was determined that the aircraft was declared airworthy by another mechanic and the flight was ready for an on-time departure when you walked on to the aircraft and entered three (3) additional items in the log book.

It was further determined that you entered the items in the log-book and not a crew member, as you claimed. The items you wrote in the log-book were not urgent nor a threat to the safety or airworthiness of the aircraft.

Your actions as described above are most serious violations of company rules and regulations. Also the intentional grounding or delaying of an aircraft on a scheduled flight is a federal offense.

In view of all of the above you are hereby terminated effective immediately.

R. Menke

R. Menke

RM/mn

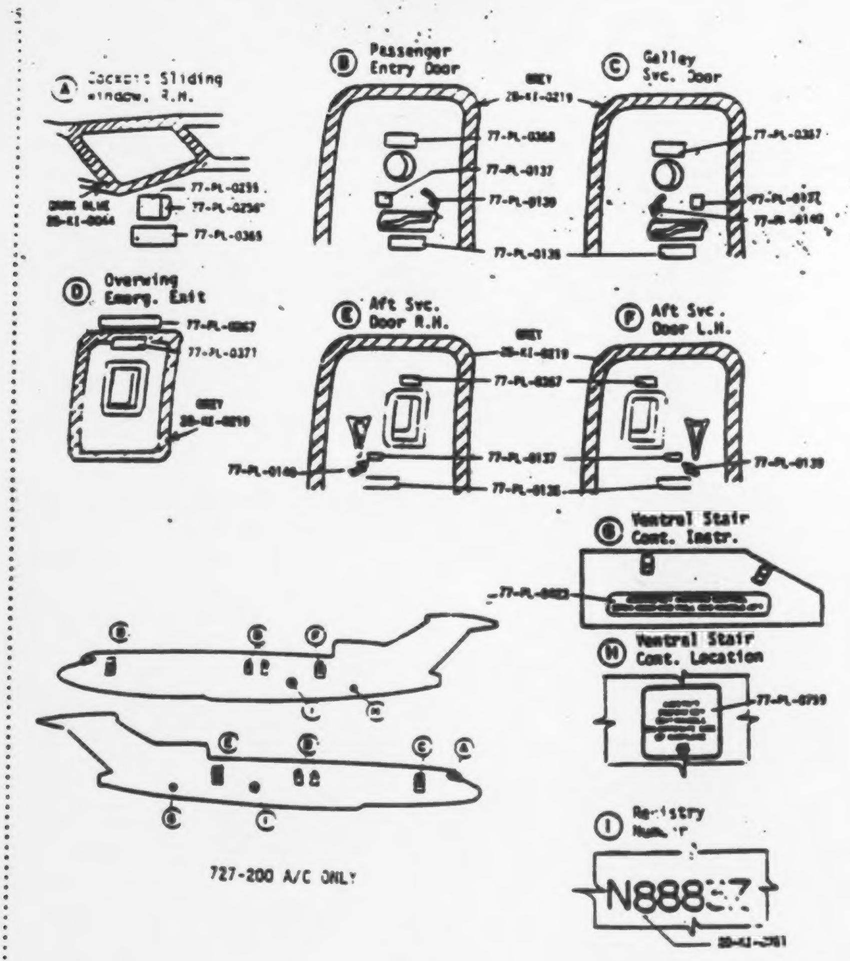
cc: H. Alvarez
S.A.Slusarczyk
IAMAW District 100
Field Human Resources

RECEIVED
MAR 17 1988
DISTRICT 100
IAMAW

EXHIBIT B

BOEING 727

MAINTENANCE MANUAL



A Cockpit Sliding Window, R.H.
77-PL-0235
DARK BLUE 28-KI-0044
77-PL-0236
77-PL-0365
B Passenger Entry Door
GREY 28-KI-0219
77-PL-0368
77-PL-0137
77-PL-0139
77-PL-0138
C Galley Svc. Door
77-PL-0367
77-PL-0137
77-PL-0140
D Overwing Emerg. Exit
77-PL-0367
77-PL-0371
GREY 28-KI-0218
E Aft Svc. Door R.H.
GREY 28-KI-0219
77-PL-0367
77-PL-0140
77-PL-0137
77-PL-0138
F Aft Svc. Door L.H.
77-PL-0139
G Ventral Stair Cont. Instr.
77-PL-0603
H Ventral Stair Cont. Location
77-PL-0739
I Registry Number
N888?7
28-KI-0761

727-200 A/C ONLY

727-200 External Marking - FAA Required
Figure 201 (Sheet 2)

Mr. MINETA. Now we'd like to call on Captain Henry A. Duffy, the President of the Air Line Pilots Association.

Your statement will be made a part of the record, Captain Duffy, so please go ahead and introduce your colleagues and proceed in your own fashion.

TESTIMONY OF HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY DON McCLURE, PILOT, EASTERN AIRLINES, AND JOHN KNUDSON, PILOT, EASTERN AIRLINES

Captain DUFFY. Thank you, Mr. Chairman. With me today is Captain Don McClure of Eastern Airlines; Captain John Knudson of Eastern Airlines. They will present a short statement following mine.

On behalf of the 40,000 pilots that ALPA represents on 43 carriers in this country, we appreciate this opportunity to affirmatively support whistleblower legislation which would protect airline employees from retaliation by their employers for reporting to appropriate Government agencies information relating to air safety.

Public interest and Federal law require that air carriers perform their services with the highest possible degree of safety. However, as I've expressed on previous occasions before Congress and other fora, we are concerned that today's competitive pressures in the deregulated airline industry and the overriding concern of some managements with bottom-line profits has resulted in some airlines reducing the level of safety at which they operate.

The Federal Aviation Administration, as this committee well knows, is the primary Government agency responsible for ensuring that air carriers operate safely. I believe that the committee is also painfully aware that the FAA lacks the necessary resources to conduct ongoing ramp inspections of aircraft such as they are now attempting at Eastern Airlines and Continental Airlines, and continuing safety compliance inspections of other airlines. For this reason the FAA must necessarily rely primarily on spot checks and periodic compliance inspections to determine if airlines are in compliance with safety regulations.

Therefore, in day-to-day operations the only continuous check and balance for ensuring that an airline is complying with the FAA's safety rules is the mechanics and the flight crew members who maintain and operate the aircraft.

Public policy and common sense dictate that these people should not only be encouraged to report violations of Federal safety regulations to the Federal Aviation Administration, but should be required to do so when their company refuses to correct reported deficiencies. However, presently these employees have no protection from retaliation by their employers for making such reports to Government agencies. Neither current Federal law nor the Federal courts provide any recourse to the employee who makes such reports and is fired or disciplined for doing so.

Thus employees are faced with a difficult dilemma: a loss of their livelihood if they report a violation, or a potential loss of life if the matter is not reported. As the committee will learn during this hearing, the dilemma is real and not merely perceived.

Some airlines are threatening their employees with discharge or other discipline if they report safety violations to the FAA. Indeed, on some occasions, the names of employees making such reports were revealed to the employer by the FAA. Recently we encouraged Eastern Airlines pilots to respond to a May 5th, 1987 request from the then-Federal Aviation Administration Administrator Don Engen for members of the aviation community to report safety-related discrepancies. However, because we feared reprisals from Eastern management against those who spoke out, we asked the pilots not to include their names, dates, flight numbers, or other identifying information. The lack of specific information made it difficult, if not impossible, for the FAA to track down the reported violation.

Had there been statutory protection for those who reported violations, the FAA could have quickly investigated the reported discrepancies and instituted prompt enforcement action, if warranted.

Whistleblower legislation such as this committee is considering is needed to protect those conscientious employees who report safety violations from retaliation, and ALPA fully supports this legislation. ALPA does have two recommendations which it believes will enhance the legislation that this committee is considering. First, the authority of the pilot in command must be preserved. Second, the legislation should provide the injured employee recourse to the courts by a private right of action.

Both tradition and Federal Air Regulations provide that the pilot in command, the captain, is the final authority as to the operation of the aircraft. Such authority and responsibility is an important part of flight safety. When an operational problem or emergency occurs, while crew input and consideration are appropriate, the ultimate decision is the responsibility of the captain. He should be insulated from adverse action for his good faith decisions made in the performance of his duties.

ALPA will provide suggested language for the committee's consideration which will codify and clarify the captain's responsibility and authority. This language will preclude some of the problems captains are now encountering when they refuse to operate an aircraft that they determine is not safe.

We also believe that it would be helpful in achieving the legislation's purpose to provide a private right of action against any employer who takes adverse action against an employee who makes a report regarding aviation safety to a Government agency.

That concludes my remarks. I'd like for each of the two Captains accompanying me to give you some first-hand experiences that I think show why we need this very valuable legislation.

Mr. MINETA. Captain Knudson, please go ahead and identify yourself.

Captain KNUDSON. Good afternoon, Mr. Chairman and distinguished member of the Subcommittee on Aviation. I am Captain John Knudson, a line pilot in my 22nd year with Eastern. I also hold the elective titles of Chairman of Professional Standards for the Eastern pilots of the Washington base here, and Local Media Spokesman. Let me emphasize, however, line pilot. I am not "Max Safety" and I do not know him personally. My responsibilities with professional standards are essentially the same as with those elected officials in the office years ago, and with those at other airlines now, and include arbitrating conflicts which may arise among pilots or addressing questions of professional conduct within the cockpit environment.

In short, we act as both an emotional cash register and a support resources clearinghouse.

I am not a member of the ALPA Master Executive Council, nor am I a part of any inner circle within ALPA. What I am is simply a line pilot, elected by my peers. Therefore while the words I speak before you today will be my own, they will to a great extent reflect the concerns of the pilots I am elected to represent.

The pilots see themselves as—and the FAR mandates that they are—the final check and balance to the assurance of a safe flight. For several years now we've been placed uncomfortably between a nonsupportive and bottom line-oriented management on the one hand, and a regulatory system unable to find a consensus of opinion within its own ranks on the interpretation of Federal law, which they are charged with enforcing. Therefore the pilots felt some guarded optimism at the announcement of a Department of Transportation investigation of Texas Air management and the events surrounding the takeover of Eastern. We are optimistic because the investigation attacked management practices which include intimidation, which include coercion, and which include employee mistreatment which is well documented; this is long overdue. We are guarded in our optimism because of Mr. Burnley's misstatements regarding the ALPA safety postcard campaign, for instance, and because we cannot understand why safety considerations as bad or worse than ours have been ignored for years at Texas Air Corporation's Continental unit—again, in spite of well-documented evidence assembled by the FAA itself.

The pilots share a sense of public responsibility for our passengers, but more than that, we feel an empathy for their problems. I cannot tell you strongly enough how embarrassed we are to be working for Frank Lorenzo's Texas Air Corporation.

My insight through our Professional Standards Committee confirms that that frustration and embarrassment account for the largest portion of the average 3.5 pilots per day currently fleeing Eastern. It is responsible for many long-term sick leaves as well. Better, say some, to view this disaster from the golf course than the cockpit.

While matters beyond our control mount on the line, there has also been a considered decision by management to not only usurp but diminish and demean the Captain's authority and stature as well. Since our new management has taken the helm, the helm of the aircraft has been slowly taken from the Captains by methods as subtle as crew scheduling and base managers substituting a first name or a "Mr." for the proper title, to less subtle correspondence threatening action if strict fuel policies or sick leave policies are not followed.

Outright intimidation occurs when a Captain or other crew member is threatened with grounding, and I and many other pilots are the victims of this form of demeaning the crew's authority. Let me give you some specific personal examples from the line pilot's perspective.

Item number one is an example of being placed between management and the FAA. It occurred on March 9th of 1987, when my Second Officer informed me at the beginning of the day that he saw a conflict—in other words, running over 30 hours in a seven-day period—toward the end of the day.

On that particular morning, after I was advised of the problem, we landed at 8:07 on the first flight and attempted contact with Crew Schedule, making contact at about 8:30 with a Mr. Dave Browning, Crew Coordinator, System Control, Miami, requesting first a replacement of Second Officer in Washington for the round trip to Boston in order to not prevent him from taking his sequence out on the following Wednesday, two days later. If they were unable to do that in Washington, we requested replacement at least in Boston due to the 30 and 7 overprojection by our Second Officer's own records. This amounted to a four-hour advance warning, and our reserves are available on a three-hour maximum call-out, so it was within the ability to do.

Mr. Dave Browning advised that Eastern Airlines interpreted the FAR, 121.471, to mean actually that the crews could go 34 hours in a seven-day period. If legal to start the sequence, he said, you were legal to finish it. It was not based on a leg-by-leg accrual. Eastern would guarantee, furthermore, no monetary loss as a result of legal representation and legal action or pay loss if violated. Furthermore, he stated, "In all my 32 years all the above were true, and there is no problem. Eastern has on file with the FAA a letter of interpretation explaining all the above."

We asked for a teletype providing proof of all of the above and were told that his statement was, "What is it with you guys? Okay, I'll get you the authorization you need in D.C. or Boston."

At 8:32 I sent a telegram to the Central Crew Schedule requesting a replacement of our Second Officer because Mr. Browning's interpretation differed widely from the traditional interpretation we had been using to that date. At 8:35 I called the Shuttle Coordinator at Washington Ramp Tower to check on the availability of a shuttle standby crew Second Officer, so that was started. At 8:40 we walked over to the hangar and checked the interpretation of the FAR with Mr. Jim Kenney, who is Assistant Principal Operations Inspector for the FAA in Chicago and who is an acquaintance of my Second Officer. He returned the traditional interpretation that we had understood earlier.

That interpretation was—and it is also backed up by a letter to Mr. James Demic, Regional Counsel for the Air Line Pilots Association, on the 20th of March, 1972, that being that the FAA has interpreted that section to prohibit a domestic air carrier from scheduling a pilot for a flight if it is known before he starts that flight that the pilot would exceed 30 hours in a seven-day period. This means that the actual flight time accumulated in the earlier part of the seven days, plus the projected, scheduled flight time for the remaining days, must never exceed 30 hours.

Subsequent to that we called down to the Miami Principal Operations Inspector for Eastern Airlines, Mr. Marfisi; he was out of his office but another gentleman in his office said he was familiar with the Eastern case, and he told us that there was no agreement or special authorization for Eastern Airlines to exceed 30 and 7, confirming again our earlier interpretation.

Later on, unable to find an answer in Washington, we had to continue on up to Boston where we found waiting for us an authorization teletype from a Mr. Curt Mitchell, from the New York Flight Director's office. That authorization states as follows: "This is the authority you requested for your Second Officer, Mr. Caputo, to exceed 30 hours in seven days on Flight 133 on the 9th of March."

In talking with Mr. Curt Mitchell further on this, basically what he said is that it was Eastern's interpretation that 34 and 7 was appropriate, that we were to continue, that—and I'm trying to find my notes as to his exact words—here it is—"Mr. Mitchell was very agitated and asked me if I was refusing the trip. I repeated that I had received the teletype and that it did not hold harmless my liability to FAA action, and that I was requesting a replacement for my Second Officer again." Mr. Mitchell said that he was sick and tired of "dealing with people like you." I said that it would help to have a facsimile of the letter of interpretation which Eastern said that they had on file with the FAA, and Mr. Mitchell said that before he would do that—and if we did not take the trip—he would remove us from this trip, and we would "all suffer the consequences." When I again requested a replacement I stated that my decision was not intended as a personal affront to him. Mr. Mitchell stated that I was to work out a replacement with Crew Schedule, that he was washing his hands of the matter, and to call him on our return to Washington.

Essentially what happened toward the end was that a replacement Second Officer was found. We left on the last trip to our home base 54 minutes late, the passengers having been delayed that long. On that last leg—we made that last leg, by the way, under the scheduled time and, even so, still ran over that 30 and 7.

Item number two illustrates the intimidation which resulted in my being grounded for five to six days. It occurred in September 10th, 1987. On that day I had a shuttle standby assignment, and I'll read you the somewhat more brief follow-up on that.

> On September 10th, 1987, I was assigned as Captain on the Washington shuttle D-6 standby. After arriving I called Control and was given aircraft 548, which due to gate space constraints and an anticipated first use three hours later, was parked behind hangar number three, well across the field. In checking current CI's on this aircraft I found that aircraft 548 had an altitude alert system inoperative on CI dated August 22, 1987.

That date was almost 20 days earlier.

> Further research indicated previous CI's opened on August 18th and cleared on the 19th, and CI number 95518 opened on August 20th, with no information available on the date cleared.
>
> I called Miami Shuttle Dispatch to request information on parts availability system-wide on the necessary part. I was informed there was no part available except at the vendor.
>
> Further research of the logbook indicates a previous history of write-ups on the altitude alert system dating back to August 10th of 1987, and these write-ups include the statement from the pilot that "The random and inappropriate soundings of the alert were causing distractions that are detrimental to the safety of flight." Calling Shuttle Dispatch, I requested that the aircraft be repaired or that another be substituted. Shuttle Control called later to inform me that no other aircraft was available and asked me if I was refusing this aircraft, number 548. I advised Shuttle

> Control that we had not been assigned to fly a trip, but that if we were, that we would require a legally airworthy aircraft.
>
> An hour later I was informed by Captain Karstensen, our base manager, that in his opinion aircraft 548 was both legal and safe; and that if I could not accept this specific aircraft, I would be removed from my sequence. I replied that I considered aircraft 548 to be not legally airworthy and that the inoperative condition of the altitude alert system, combined with the unreliability and random activation of the system in-flight had significant negative safety implications.
>
> At that time,

3:50 in the afternoon by that time.

> Captain Karstensen removed me from the sequence and told me that I should go home.

Particular care was taken by me to ensure that the company was made aware in a timely manner that the aircraft required repair. Recourse to the FAR confirmed the reason for my particular caution with the altitude alert system; FAR 91.51 indicates to me that operation with the altitude alert system inoperative is very strictly limited and is, in effect, reason to ground the aircraft pending repair, taking precedence over the more flexible provisions of the MEL.

This particular FAR is unusual in that it was written specifically to address the importance of the altitude alert system. Essentially, to paraphrase it, it states that the aircraft shall not be used in revenue service except for very limited occasions; for instance, to get it to an airport where maintenance is available, or to ferry the aircraft out of the country for sale outside the country, certainly not in revenue service between LaGuardia and Washington National carrying revenue passengers, as it had been for the past 20 days.

The third item—I apparently did not make the copy and I may not have it with me—involved the—well, I have enough here to get started with. It involves an instance earlier this year when in Tucson, Arizona, on a layover, I was presented on two consecutive days in returning with two aircraft which I had to refuse because of write-ups. These aircraft were written up and maintenance was done, turning a two-day trip into a four-day trip. Later on, because these write-ups involved what is called the "cove panel brackets" on the wings, I received a letter from Mr. D. Ross Fischer, Director of System Operations for Miami System Control. This letter illustrates to me either a great naivete on his part or an effective——

Mr. MINETA. Captain Knudson, could you submit that for the record?

Captain KNUDSON. Surely. I'd be happy to.

Mr. MINETA. The thing I'd like to ask is, in terms of the three incidents you're talking about, are they cases in which you have been disciplined or terminated or had any kind of disciplinary action taken against you?

Captain KNUDSON. No. The point I wanted to make on the first item, for instance, was that it was a case of being placed between the FAA's inability to address the difference in interpretation between our company managers and their interpretations.

Mr. MINETA. Okay. And number two case involves the control item, the CI, right?

Captain KNUDSON. That was—there was a CI available—I'm sorry, we're talking about the third item?

Mr. MINETA. The second item, the second incident.

Captain **Knudson**. Yes. It was on a CI, but the separate FAR would take precedence over that.

Mr. **Mineta**. Okay. Let's hear from Captain McClure.

Captain **McClure**. Thank you, Mr. Chairman. I'll make this as brief as possible.

I have here with me, which I will submit for the record, copies of a letter from Mr. Stephen J. Kolski, who is the Compliance Staff Vice President for Eastern Airlines, addressed to Mrs. Dole who at the time was the Secretary of Transportation, regarding one of these postcards that had been submitted to the Department of Transportation and, I believe, maybe your committee, sir. It had to do with a Captain who refused an aircraft which had a generator inoperative on it, and there was a very inclement weather forecast that evening, including such things as thunderstorms, tornadoes, and heavy hail.

The reason I cite this as an example, apparently Mr. Kolski felt in his letter, which is self-explanatory, that the election of the Captain not to fly the aircraft into this kind of weather with an inoperative generator was something that certainly should have been done, that it was perfectly reasonable to do it, and I daresay, sir, that not I nor any other pilot nor the passengers would want to ride into a thunderstorm with all of the generators operating. I will submit that.

I myself was involved in an incident where I was sent home from a trip. I reported for work here at Washington National Airport on a morning in August of last year and found that there was a maintenance discrepancy with the aircraft that had been placed on a CI. The aircraft had been at three maintenance bases and overnighted here in Washington, which is a maintenance base; the discrepancy had not been cleared up. The component was still inoperative on the aircraft. It had the caveat on it, which you're familiar with from the MEL, that says it "shall not depart a station where repairs or replacement can be made."

I told all of the appropriate company officials that I had no intention of flying the aircraft until it was made airworthy. Subsequently, after two phone calls to Dispatch, I wound up on a phone conversation with the Vice President of Flight Operations who, after a very short conversation, told me to go home, that he would get somebody else to fly the airplane, and that he would talk to me later. He then hung up the phone. I did as I was told. I went home, which left 149 people and six other crew members standing at the gate.

I also have with me, which I will submit, three notarized statements—one from a Captain, one from a First Officer, and one from a Second Officer who were part of a shuttle standby crew at Washington National Airport in March of this year. While they were at the airport awaiting an assignment for a backup trip on the air shuttle, Mr. Ross Fischer, who was mentioned by Captain Knudson earlier, came up and contacted the Second Officer, a Mr. Boveri, who was on the other standby crew at the time, and ultimately sat down and—to condense all of this very briefly—started to intimidate Mr. Boveri by telling him that the number of times that he had been associated with write-ups about airworthiness items on the aircraft were showing "spikes" on his record in Miami. Mr.

Boveri was a relatively new employee with the company at the time, and it was alluded to by Mr. Fischer that he should stop this sort of activity or his job might be in jeopardy.

I must hasten to add that in my particular incident where I was sent home, I was merely sent home. I did not suffer any monetary loss for that period of time or the trip that I missed.

It's very interesting to see that the company would feel it necessary to intimidate a Second Officer with regard to the thoroughness with which he would pre-flight his aircraft, because in fact all he does is report to the Captain. The Captain is the one who will authorize the entries in the logbook about maintenance items.

But very quickly, that's briefly what I have for you, sir.

Mr. MINETA. Captain Duffy, let me ask you, do ALPA's collective bargaining agreements protect employees who give information to the FAA from management retaliation? If so, why are these protections not adequate so that maybe legislation wouldn't be needed?

Captain DUFFY. Well, the grievance sections aren't specific to protecting FAA-reported instances. However, any discipline would be protected by the grievance section.

I think we have two things here. I think the ability of the company, where we have a collective bargaining agreement, to delay the adjudication of the discipline—as you heard the machinists testify, 18 months later a hearing is finally held; meanwhile the discipline is put in place, and that pattern of intimidation is not only obvious to the individual employee but all of the employee's fellow workers. So a management that wants to institute a certain anti-safety program can do so and get away with it for a long time under the Railway Labor Act if they are determined to string out grievances.

But, Mr. Chairman, I think more important, on the non-union carriers there is simply no protection. There is nothing that stops the employer from intimidating or imposing its management will on the employee if that employee wants to save his or her job. And I think that's the real danger. You've heard us use the term "pilot pushing" before. It's an old term going back to the 1930's, but unfortunately it is creeping back in. It even creeps into the union carriers, but the fact that our grievance procedures can't always protect our people makes me have sincere concerns about what's going on on the non-union carriers.

Mr. MINETA. Are you aware of many cases in which employees have been disciplined for giving safety information to the FAA or for refusing to carry out orders which would create a safety problem?

Captain DUFFY. Yes. You have heard instances here. While both of these Captains talked about "only" being removed from their trips and not actually being taken off the payroll, that intimidation is just as strong as formally being removed from the payroll. The humiliation of being removed from your line trip and knowing that that's hanging over you the next time you might stand your ground on a safety item, I think goes just as far as any actual and real punishment.

I was reading part of Congressman Oberstar's testimony today where, before one of his committees, I brought the Master Chairman of ComAir, who was testifying before a Congressional committee about commuter safety. And as soon as she returned, the company called her in and chastised her. That's coming to the Congress, and the same thing happens in going to the FAA.

Mr. MINETA. Your testimony urges that employees have a private right of action. Do you mean that an employee should be able to go to court after the Department of Labor or the FAA has decided that an employee was improperly disciplined? Or do you mean that an employee should be able to go to court instead of going to the Department of Labor or the FAA, whichever agency is charged with this?

Captain DUFFY. In addition to, Mr. Chairman. Again, where there is a grievance machinery the courts would say that the grievance machinery is the way to go. But for an employee to be disciplined and taken off the payroll, that employee needs immediate relief and needs to have the right of private action to go to the courts and try to enjoin the action and try to stop it and get the relief from the courts while the other processes grind on. So we would suggest that as another way of putting a layer of insulation around that employee from some abusive employer tactics.

Mr. MINETA. A couple of weeks ago I was on a program called "Meet the Press" with Secretary Burnley and Mr. Lorenzo. At that time we heard—and we heard again this morning—the Secretary of Transportation's comment, saying that only 6 of the 1,300 postcards from the Eastern pilots had established any safety violations. So I'd like to have you comment on whether it was 6 out of 1,300, or whatever the record might be.

Captain DUFFY. Mr. Chairman, I think that raises serious concerns about the objectivity of the Secretary of Transportation with regard to this investigation. It was in his knowledge that we were responding to a plea from the FAA Administrator to report safety violations. We wrote to then-Secretary Dole and told her that if we reported these violations, that we so feared reprisals from Eastern management that it would be necessary for us to make them anonymous to the degree that we could, recognizing that it would make them very difficult to track down in the case of individual incidents, but it was our purpose to show a pattern. And that pattern, we hoped, would invite a close inspection of the maintenance practices and the other abuses going on on Eastern Airlines. This Secretary of Transportation was aware of that and chose, I think, to belittle what was an honest attempt on our part to bring forward unsafe practices on Eastern Airlines. Again, it gives us strong concerns about his intent in ordering these inspections and his judgment of the results of these inspections.

Mr. MINETA. I can say that I was one of the recipients of those blue cards, what you might call fan mail; maybe more appropriately, "fanjet mail." [Laughter.]

Captain DUFFY. Mr. Chairman, had we been able to get some assurance of immunity—I mean, it is the best argument I could think of for this piece of legislation. Had we known the immunity existed we could have been specific. The Secretary's charge that we wasted countless hours of FAA's resources, I think, doesn't hold up. We were trying to show a pattern. We did show a pattern. We think that the initial results of these inspections, even though we don't think they are the right type of inspections, are showing that in fact there were misuses of MEL's and——

Mr. MINETA. From my observation of those cards there were some pilots who put N-numbers down on those cards, or they would show, for example, that on the 27th of April from Syracuse to Chicago, whatever the flight might be, so you would be able to identify the aircraft. And there were some very serious allegations about the equipment.

So that's why I really question whether it's only six out of 1,300, just from my cursory observation as a lay person looking at those cards. What I was doing was to send those to the FAA and ask specifically for follow-up on those that we could identify with a serious problem if you went back and found out what plane it was.

So I seriously question the 6 out of 1,300.

Captain McClure?

Captain McCLURE. Mr. Chairman, if I may——

Mr. MINETA. I recognized your handwriting on some of those cards. [Laughter.]

Captain McCLURE. Sir.

Maybe I can recount to you an occurrence that I was involved in where there was no problem with documentation, I can assure you, of an aircraft that was unairworthy that was brought to me by a flight crew in Tucson, Arizona. I documented not only the width and depth and the blade number of the fan blade that was damaged in the aircraft, but I also in subsequent conversations with Federal Aviation Administration employees out of the Miami Flight Standards District Office, supplied them with a written statement from the Second Officer who was in the crew who brought me the airplane——

Mr. MINETA. Was that the one with the hose ingested into the——

Captain McCLURE. No, no. This was before that happened.

The purpose was to establish the fact that that airplane flew from Washington to Kansas City to Albuquerque to Tucson with an unairworthy engine on it. I sent a letter that I composed, and I sent all of these statements and all of the log pages and the entire documentation to the FAA, and I got back a letter from the Principal Operations Inspector for Eastern in Miami that said, "We could find no violation."

I'll be very honest with you, sir, as a pilot I find it a little bit difficult to have a whole lot of faith in the FAA's ability to investigate even a documented incident when I know and can prove that that airplane was unairworthy for three legs, when I get a letter like that back. No wonder they couldn't find anything in the postcards; I'm surprised they found the six.

Mr. MINETA. Mr. Gingrich?

Mr. GINGRICH. I want to thank all three of you for coming today. Your testimony is very helpful.

I have some specific questions I'd like to ask.

As I understand your point psychologically about being sent home, that in fact it is a form of psychological intimidation but not in fact economic punishment or what have you—is that a correct summary?

Captain DUFFY. I think there's a lot of pride that gets put underfoot when you are removed from your flight. There is some stigma that goes with that.

Mr. GINGRICH. In fact, you are being reprimanded psychologically for having enforced what in your professional judgment was a safety obligation? Is that a fair characterization? I'm trying to find a way to frame this.

Captain DUFFY. Well, I think the fact that you are being singled out—and a Captain's authority, again, is a very powerful thing but it's also a very fragile thing. Airlines have built a whole discipline around enforcing a Captain's authority. When an airline turns around and stops doing that and starts challenging the Captain's authority, that will go right through the basic safety structure of that airline.

Mr. GINGRICH. Now, were there incidents where a pilot for Eastern Airlines or Continental would reject an airplane and the pilot would stay and the plane would change?

Captain MCCLURE. Yes, sir, that has occurred where, in other words, a crew member would turn an airplane down and you would get another airplane?

Mr. GINGRICH. Right.

Captain MCCLURE. As a matter of fact, that happened to me just yesterday.

Mr. GINGRICH. Okay.

Captain MCCLURE. And additionally, the second one was bad.

Mr. GINGRICH. Did you then turn it down?

Captain MCCLURE. Yes, sir, I did.

Mr. GINGRICH. You got in a third plane?

Captain MCCLURE. No, that airplane was ultimately fixed.

Mr. GINGRICH. Okay.

In cases where somebody is sent home, do we know offhand what happens then to the airplane? Let's say you have a disagreement with the management. You say the plane is not airworthy; the management says you're not airworthy, you go home. What does management then do?

Captain KNUDSON. Perhaps I can address that. In my case, after I went home, the base manager took over that standby slot that I had left until another pilot could be brought on board. The pilot who finally got there also refused the airplane——

Mr. GINGRICH. Was he sent home?

Captain KNUDSON. No, because at that point the standby period was over and I think it was a moot point. But the following day the airplane was flown by another pilot, and ultimately the airplane was repaired.

Mr. GINGRICH. Now, did the pilot the following day know that the plane had been rejected twice the preceding day?

Captain KNUDSON. Yes, he did, but he wasn't fully aware of the reasons for it. The knowledge of a specific FAR covering that altitude alert is not common knowledge.

Mr. GINGRICH. So there's no procedure by which, when you reject an airplane, you create a written document of your rejection?

Captain KNUDSON. Well, there should be. Yes, I can write in the logbook that I am rejecting the airplane.

Mr. GINGRICH. But you don't automatically?

Captain KNUDSON. No. Normally there's a line pilot report that follows, citing the reasons for refusing the airplane.

I might also add to an earlier question that my being sent home was not the only intimidation involved. Not hearing from anyone at the office for five days was itself not the only intimidation, but also the other pilots who would be in my place, the other Captains who would be faced with the airplane, would also realize that they too might be disciplined for refusing the airplane or another airplane with similar problems.

Mr. GINGRICH. Have any pilots actually been fired for not accepting airplanes?

Captain McCLURE. Not that I know of.

Mr. GINGRICH. Or have any suffered loss of pay?

Captain McCLURE. I don't think so, for specifically refusing an airplane. Maybe a pilot has had a number of occasions where he has turned aircraft down, and ultimately something else happens further on; then maybe the company comes in the back door and puts some disciplinary action on him that you can't directly tie to the fact that he has refused to fly airplanes.

If I could maybe just address your first question, Mr. Congressman, about the airplane. The one that I turned down and was ultimately sent home for, the second Captain who came out additionally refused to fly the airplane, and the airplane was fixed within five minutes. They took the part off the shuttle standby airplane behind my ship, put it on board, and they sent the corresponding replacement part down from New York on the next air shuttle. All this could have been taken care of the night before by scheduling proper maintenance for that aircraft when it laid over in Washington. And I think Captain Knudson alluded to a very important thing, that when either he or I or another Captain is sent home, that the important thing is—if you will—the "ripple" or "trickle down" effect that that may have on the rest of the members of our flight crews on the airline and how they approach their job and their decisionmaking process with regard to making sure their aircraft are safe and airworthy.

Mr. GINGRICH. If an airplane is rejected by a Captain who believes it to be unsafe and the airplane is then used without repair, does that Captain have any obligation to tell the Government that in his judgment an unsafe airplane is now in the air?

Captain McCLURE. I don't think he necessarily has an obligation, but I feel certain that if he didn't tell the Government that, for instance, myself or one of the other safety representatives with ALPA, at least on Eastern, would hear about it. I've had numerous calls over the last two years with regard to that sort of thing.

Mr. GINGRICH. Do you ever tell the Government?

Captain McCLURE. I beg your pardon?

Mr. GINGRICH. Do you ever then tell the Government?

Captain McCLURE. Absolutely. I have no problem advising them.

Mr. GINGRICH. Do you get any kind of cross-pressure from Eastern—do you tell Eastern when you tell the Government?

Captain McCLURE. No, sir, I do not.

Mr. GINGRICH. Isn't that a violation according to one of these documents that I've seen? Is there a policy that——

Captain McCLURE. I don't think so with regard to the pilots, and I certainly wouldn't purport to know everything that's in our contract but I don't believe there's a clause in there that precludes me from addressing an aviation safety item with the Federal Government.

Captain DUFFY. You know, we're talking so much about Eastern—I think it's important to contrast it. I don't know of very many airlines where it's necessary to go outside the corporate structure in order to get something fixed. I mean, it's a compliment to the way most airlines work that if you stand up for safety, especially if the Captain stands up for safety, it gets fixed. That's the unfortunate part of what's happening on Eastern.

Mr. GINGRICH. I'm glad you raised that, Mr. Duffy. I had just read the submission of the letter by Mr. Anson of September 18, 1987, in which he assessed a 10-day disciplinary suspension for encouraging mechanics in Seattle to report alleged safety or procedural violations to the FAA, and I just read this and I saw a friend of mine from Carrolton, Georgia, who was surprised that I feel so strongly about the whistleblower bill, because he's a conservative and he didn't understand why we need this.

My position was that it is precisely bad businesses who create laws for good businesses, that in fact during the long stretch in which people in the airline industry were primarily concerned about aviation that actually liked airplanes and thought it was important to be able to fly them well, I can't recall any particular period, even when you had very great labor-management stress, in which anyone suggested that safety would be a significant casualty of the desire for profit. But I think that's why, unfortunately, we tend to focus in this particular aviation hearing on one or two managements, both of which tend to be under the same ownership.

Captain MCCLURE. Mr. Gingrich?

Mr. GINGRICH. Yes?

Captain MCCLURE. Excuse me, sir, just one thing that I think is very important along those lines. As short a period of time as two to two and a half years ago, and I have been involved in the ALPA air safety structure on Eastern since 1967, there wasn't a time that I couldn't pick up a telephone and call a Vice President of Flight Operations or Maintenance at home and, if necessary, get an aircraft pulled out of service to get it fixed. Today, they call me and tell me to either go home or take the airplane without fixing it.

Mr. GINGRICH. Let me ask one other question that confused me, because I'm not a pilot and I'm not a mechanic, and I think some of this is perplexing to everyday citizens.

There is an MEL which, as I understand it, is a Federal Aviation Administration Minimum Equipment List. Is that correct?

Captain DUFFY. Yes.

Mr. GINGRICH. Now, I am confused because my impression is that there seems to be a gray area where airplanes can be regarded—there was a memo submitted in which somebody is arguing that flying with two generators—letter of June 29th to Elizabeth Dole, 1987, by Stephen Kolski—in which he's sort of arguing that "The operation of an aircraft with one generator inoperative—most airplanes have three, or where they may have two they are authorized to use the auxiliary power unit in flight as a third source of electrical power—is an FAA-approved procedure. Through the use of an FAA approved minimum equipment list certain items or components are authorized to be inoperative and it is common at Eastern Airlines as well as every other airline to have an MEL authorize the operation of an aircraft with one of the three power sources inoperative."

What I think confuses the average citizen, including this Member of Congress since we're not technically skilled and we don't understand all these details, is, does the minimum equipment list of the Federal Government mean minimum equipment? And if an airplane has the minimum equipment, is it therefore safe? And if it's not safe, does that mean the Government should be upgrading the minimum equipment list?

Captain McClure. Okay. I'd like to address that, and I think that's an exceptionally good question.

First of all, let me see I can address the part of whether it's minimally safe. Yes, it is minimally safe, Mr. Congressman, but subject to that has to be the discretion of the Captain to say, "Is it safe tonight with the thunderstorms and the tornadoes and where I'm going?" On the particular airplane in question when you're down to two generators instead of three, you have to start reducing the electrical load on the aircraft. Unfortunately the airplane was not built with generators that were sufficient for one of them to carry the entire electrical load.

Additionally, part of our training is the operation of an aircraft with the loss of all generators, and it is continually simulated to occur during convective activity or thunderstorm activity at night when you might take a lightning strike. You can simultaneously lose all three, not just two generators.

So when they write the minimum equipment list and approve it in Seattle when the airplane is certificated, for instance, that's fine, but that can't take into account all of the variables that may be encountered by a flight crew, and that's why you pay the Captain to make the decision about, "Hey, tonight's the night to get the generator fixed, and tomorrow night, when it's a nice clear night, we're going to take it." So that's the basis upon this.

Now, the second part of your question is, assuming the first case, should the MEL then be upgraded or more restrictive? In some cases we certainly feel it should. We have seen cases where we feel things are permitted to go along too long inoperative, and the generator is one of those cases. We hope that the philosophy that the FAA has adopted recently, if you will recall their new letter out to their operators that they're going to put these ABC categories of inoperative items and they're going to place time limits on them—we like the concept. We just hope the time limit is right.

Mr. Gingrich. In that sense, Captain McClure, and the others may want to comment, do you sense a tightening up, not just in this particular Texas Air involvement but across the board? Do you sense a new commitment by FAA to a more systematic approach on this kind of safety equipment and safety approach?

Captain Duffy. I think so, Mr. Gingrich. I am seeing a new awareness that has probably been created by all the spotlight on Texas Air, but I think the abuses that we were able to demonstrate on Eastern showed them that there was so much interpretive discretion in how they looked at the MEL that an airline that didn't have a propensity toward safety compliance could interpret their way through a magnificent stretch of the MEL concept. And I think these changes that are coming out that Captain McClure just referenced are going to put some very tight, non-interpretive rules around the MEL procedures.

Mr. GINGRICH. Let me ask one other question and then I want to outline a concept for your reaction.

My other question would be that if we draft a bill this year, and I'm very much inclined to wanting to work with Mr. Mineta in doing that, because of the nature of the air transportation industry—in fact, so much of it is safety related; we were talking earlier about coal mining and the difference between the concerns about the safety of a coal miner from an OSHA standpoint and the safety of the employee, and the concerns that you have in the public transportation area—one of the things that I would consider looking at is raising the issue that once you go to a true whistleblower environment where you're protected, that we would not in fact tolerate any labor institution systematically exploiting that for labor-management purposes. In other words, would there have to be a pretty tough line that says, "Yes, you're really protected if it's real"? I'm not saying that ALPA or the Machinists or anybody has played games. I'm saying that in a different environment at a different time, if we went to those new rules it seems to me that they also have to be a little tighter on the way in which labor would then be able to encourage its members to report certain things to ensure that it wasn't abused. Do you have any objection to that?

Captain DUFFY. Mr. Gingrich, we have no problem with that concept at all, but you must give me just a moment to talk about what I consider is a red herring raised by the Secretary of Transportation, and that is to call every safety move a "labor-management confrontation." I must say that if you have a management who undertakes unsafe practices, that if you followed Mr. Burnley's thoughts, the employees should simply roll over to that. In fact what you have is a system-wide rebellion by the employees of Eastern Airlines who said, "We're not going to accept these unsafe practices," and I suggest that that is not a labor-management confrontation. It is a pure, basic safety matter, and that's what the employees should be doing.

Mr. GINGRICH. This being the baseball season and us Braves fans needing all the help we can get, I will throw you an easy one. [Laughter.]

Can you think of some recent examples over the last few years of labor-management negotiations that were difficult but in which there was no safety involvement, and nobody even thought about raising the safety issue?

Captain DUFFY. I think it's been traditional within the industry, in fact, to have collective bargaining off on one side and put safety in kind of a sacred category.

Now, when it comes to a job action, when you've got new people being substituted, then I think the safety question is automatically raised because you have new and inexperienced people performing new duties. And I think that's probably exposed to the safety spotlight, but I think FAA should be able to step in there and judge that matter. But I don't think it's a normal course of action to include safety matters in labor-management relations. I hope we're not heading in that direction in the industry.

Mr. GINGRICH. I just want to say that I very much appreciate your testimony and the others' testimony that we have heard today. I am very convinced that there are some minimum protections that are unavoidable, given some of the changes in management practices in the airline industry, and that public safety requires that we protect those who are willing to undertake the risk of protecting us. And I thank you very much for your testimony.

Mr. MINETA. Thank you very much, Captain Duffy, Captain McClure, Captain Knudson.

[The prepared statement of Captain Duffy, and materials submitted for the record by Captain McClure, follow:]

STATEMENT OF
HENRY A. DUFFY, PRESIDENT
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
BEFORE THE
SUBCOMMITTEE ON AVIATION
U.S. HOUSE OF REPRESENTATIVES
APRIL 27, 1988

WHISTLEBLOWER LEGISLATION

Mr. Chairman, I am Captain Henry Duffy, President of the Air Line Pilots Association. ALPA represents the professional interests of over 40,000 pilots who fly for 43 airlines. With me today are Captain John Knudson and Captain Donald McClure, who are both pilots employed by Eastern Air Lines.

We appreciate the opportunity to appear before the Subcommittee to provide you with our views in support of "whistleblower" legislation, which would protect airline employees from retaliation by their employers for reporting to appropriate government agencies information relating to air safety.

Public interest and federal law require that air carriers perform their services with the highest possible degree of safety. However, as I have expressed on previous occasions before Congress and in other forums, we are concerned that today's competitive pressures in the deregulated airline industry and the overriding concern of managements with bottom line profits has resulted in some airlines reducing the level of safety at which they operate. The Federal Aviation Administration, as the Committee knows, is the primary government agency responsible for insuring that air carriers operate safely. I believe that the committee is also painfully aware that the FAA lacks the necessary resources to conduct ongoing ramp inspections of aircraft, such as they are now doing at Eastern and Continental airlines, and continuing safety compliance inspections of airlines. For this reason, the FAA must necessarily rely primarily on spot checks and periodic compliance inspections to determine if airlines are in compliance with safety regulations. Therefore, in day-to-day operations the only continuous check and balance for insuring that an airline is complying with the FAA's safety rules are the mechanics and the flight crew members who maintain and operate the aircraft.

Public policy and common sense dictate that these people should not only be encouraged to report violations of federal safety regulations to the FAA, but should be required to do so when their company refuses to voluntarily correct reported deficiencies. However, presently these employees have no protection from retaliation by their employers for making such reports to government agencies. Neither current federal law nor the federal courts provide any recourse to the employee who makes such reports and is fired for doing so. Thus, employees are faced with a difficult dilemma, a loss of their livlihood if they report a violation or a potential loss of life if the matter is not reported. As the Committee will learn during this hearing, the dilemma is real and not merely perceived. Some airlines are threatening their employees with discharge or other discipline if they report safety violations to the FAA. Indeed, on some occasions, the names of the employees making such reports were revealed to the employer by the FAA.

Recently we encouraged Eastern Air Lines pilots to respond to a May 5, 1987 request from then FAA Administrator Donald Engen for members of the aviation community to report safety-related discrepancies. However, because we feared reprisals from Eastern management against those who spoke out, we asked the pilots not to include their names, dates, flight numbers or other identifying information. The lack of specific information made it difficult, if not impossible, for the FAA to track down the reported violations. Had there been statutory protection for those who reported violations, the FAA could have quickly investigated the reported violations and instituted prompt enforcement action, if warranted.

Whistleblower legislation, such as the Committee is considering, is needed to protect those conscientious employees who report safety violations from retaliation, and ALPA fully supports this legislation.

ALPA has two recommendations which we believe will enhance the legislation the Committee is considering. First, the authority of the pilot in command must be preserved. Second, the legislation should provide the injured employee recourse to the courts by a private right of action.

Both tradition and federal air regulations provide that the pilot in command -- the captain -- is the final authority as to the operation of the aircraft. Such authority and responsibility is an important part of flight safety. When an operational problem or emergency occurs, while crew input and consideration are appropriate, the ultimate decision is the responsibility of the captain. He should be insulated from adverse action for his good faith decisions made in the performance of his duties. ALPA will provide suggested language for the Committee's consideration which will codify and clarify the captain's responsibility and authority. This language will preclude some of the problems Captains are now encountering when they refuse to operate an aircraft that they determine is not safe.

We also believe that it would be helpful in achieving the legislation's purpose to provide a private right of action against any employer who takes adverse action against an employee who makes a report regarding aviation safety to a government agency.

This concludes my remarks in support of whistleblower legislation. I would ask the Committee's permission to permit Captains Knudson and McClure to relate their personal experiences with regard to reporting flight safety violations which will very vividly demonstrate the need for whistleblower legislation. After their comments, we would be pleased to respond to any questions the Committee may have.

EASTERN AIR LINES INCORPORATED MIAMI INTERNATIONAL AIRPORT MIAMI, FLORIDA 33148

Submitted by:
Capt. Don McClure

EASTERN

June 29, 1987

The Honorable Elizabeth Dole
Secretary of Transportation
U. S. Department of Transportation
Washington, DC 20590

Dear Madam Secretary:

Recently Eastern received a post card dated June 19, 1987 that described a trip that incurred a two hour delay due to a plane change and, apparently, the plane change was necessitated because of the refusal of the pilot to operate the aircraft with a generator inoperative.

Because the post card does not contain a flight number, the date or any other identifiable information which could lead us to determine the flight and date, we are unable to investigate this specific occurrence. However, the operation of an aircraft with one generator inoperative (most airplanes have three or where they may have two they are authorized to use the auxiliary power unit in flight as a third source of electrical power) is an FAA approved procedure. Through the use of a FAA approved minimum equipment list certain items or components are authorized to be inoperative and it is common at Eastern Airlines as well as every other airline to have an MEL authorize the operation of an aircraft with one of the three power sources inoperative.

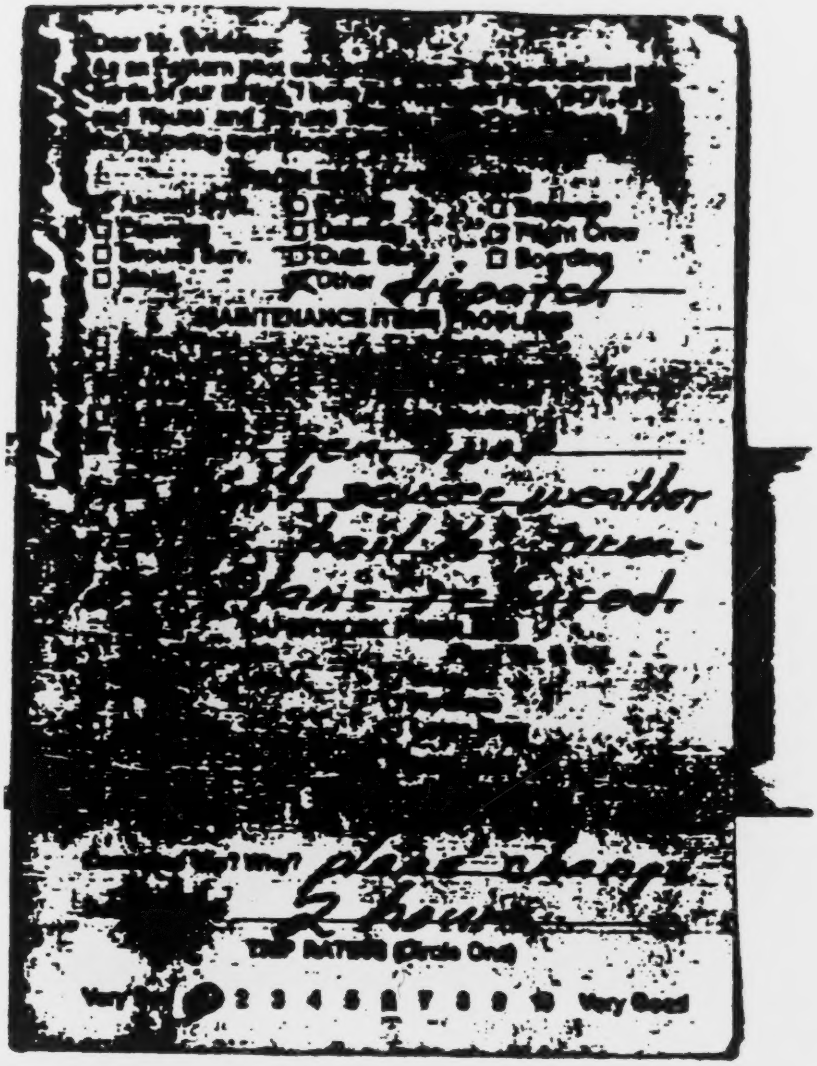
Again, because the post card does not provide specifics, we can only assume that this particular pilot does not feel he is as competent as most pilots at Eastern or at other airlines in the United States. The operation of an aircraft with one generator inoperative, even at night, or even with severe weather warnings or even with hail or tornadoes (the description on the post card) is not an unsafe procedure. Clearly, this two hour delay could have been avoided--and should have. Additional training is warranted for this particular pilot.

If you desire any additional information from Eastern with respect to this post card, please do not hesitate to contact me.

Sincerely,

Stephen J. Kolski

Stephen J. Kolski
Counsel Regulatory
Compliance and Staff
Vice President



Dear Mr. Wilding:

☐ Flight Crew

☐ Ground Serv. ☐ Cust. Serv. ☐ Boarding

☒ Other

MAINTENANCE ITEM

severe weather

hail

good.

Why?

TRIP RATING (Circle One)

Very Poor [✓ 1] 2 3 4 5 6 7 8 9 10 Very Good

March 10,1988

On Tuesday, March 8, 1988, while on Standby (D-2 0610-1810), I was witness to a discussion between Steve Boveri and Eastern Vice-President Ross Fischer. It appeared that the purpose of Ross Fischer's visit to the standby room was to talk specifically to Second Officer Boveri.

Without knowing any prior facts, it became apparent that Mr. Fischer was questioning Steve Boveri's thorough pre-flights. Apparently the company keeps records on everyone and Steve's pre-flight and subsequent downing of Shuttle Airplanes "spikes" company records.

Mr. Fischer invited Steve out into the hall for a "private" talk. I wonder why the Vice-President of System Control has the authority to bypass the flight operations chain of command, and in my opinion, attempt to intimidate an Eastern Second Officer.

Paul A Staley

Capt. Paul A. Staley

Sharon E Clark

[illegible]

3-11-88

On 8 Mar 1988 I was at the DCA crew lounge (airport side) assigned to D-2 (0610 STANDBY). Also with me were the other two members of my crew, Capt Paul Staley and S/O Drew Bradley. In addition, Capt Wayne Nolan and S/O Steve Bowers were present as members of D-1 (0610 STANDBY).

Steve Bowers received a phone call at the lounge from an individual who identified himself as Ross Fischer, a Vice President of EAL. According to Steve, Mr. Fischer said that he was interested in meeting Steve since he had read so much about him. When Steve asked what he meant by that Ross Fischer supposedly said that he was referring to the maintenance reports that were crossing his desks at Miami. Mr Fischer wanted to meet with Steve in private but Steve suggested they meet at the crew lounge. Mr Fischer agreed.

When Mr. Fischer arrived at the crew lounge Steve had stepped out to the post office so I engaged in a conversation with Mr. Fischer along with Capt Staley and Capt. Nolan. The conversation quite naturally kept drifting towards Eastern Management's policies towards its employees. Mr Fischer seemed somewhat uncomfortable and kept explaining how he was not here to discuss company politics and could not comment on such but as an individual working for management had to work with the cards dealt to him

When Steve arrived he joined in our conversation and Mr Fischer admitted that he was here to discuss with Steve the number of airplanes that had temporarily been put out of service due to discrepancies that Steve had discovered during pre flights. Mr Fischer hinted that Steve actions might be politically motivated. Steve explained that he did not initiate a pre-flight with the intention of downing an aircraft but felt it was his professional duty and responsibility to do a thorough job. He further explained that during a typical pre flight, he would write down a list of discrepancies he would find, show the list to the Capt who in turn would then decide which items if any should be put in

3-11-88

the maintenance book.

Mr. Fischer indicated that he felt it necessary to follow up on what he referred to as spikes in the system. ie, situations that did not conform to normal operations. He stated specific examples such as numerous DCA S/O's writing up faulty support brackets in flap well pannels and that very few similar write-ups were occurring from S/O's at other bases. He did not seem concerned over the fact that these problems with the aircraft existed but rather he was concerned that the DCA S/O's were politically motivated to cause problems within the EAL operations. He then showed Steve a maintenance or operational report from MIA that had Steve's name on it. Apparently it was a statement to be on the look out for maintenance problems at DCA that day because S/O Bowen was assigned to work.

Shortly thereafter Mr. Fischer stated he had to leave and asked if Steve would accompany him down the hall. Steve motioned to Capt Nelan to accompany them but Mr. Fischer assured us that would not be necessary. Steve left with Mr Fischer and when he returned said that Mr. Fischer told him he had been identified down in Miami and insinuated to Steve that if he continued to write aircraft up as he had in the past that his job would be in jeopardy.

After witnessing the whole event, with the exception of the final 5 minutes or so in which Steve spoke privately to Mr. Fischer, it is my opinion that Mr. Fischer's purpose was to intimidate and apply veiled threats to Steve Bowen, to stop writing up aircraft for maintenance purposes

I have flown with Mr Bowen in the past and have the utmost respect for him as a person and a flight crew member. He is a true professional in every meaning of the word.

Commonwealth of Virginia
County of Fairfax
to wit:

Mary K. Cldwoy
Notary Public

Michael T. Reiley
Michael T. Reiley F/O

STATEMENT OF SECOND OFFICER CHARLES A. BRADLEY

On Tuesday, March 8, 1988, I was working "D-2", the morning New York-Washington, D.C. shuttle standby. Sometime after 10:00 a.m. I walked down to the operations office to use the computer terminal. When I returned to the air shuttle lounge there was a discussion going on about Eastern and specifically about the air shuttle operation. Seated around a table was Captain Paul Staley, Second Officer Steve Boveri, First Officer Rex Reily, Captain Wayne Dolan and a man whom I did not recognize but who later turned out to be Mr. Ross Fischer, Director/System Control for Eastern. I grabbed a chair and sat down next to Mr. Fischer and Captain Dolan. I recall that Mr. Fischer was explaining his job - how he tracked systemwide operations and specifically how problem areas were identified. It didn't take long before the volume of the conversation climbed as everyone stated his opinion as to where Eastern's real problems originated. In an attempt to bring the conversation back in to what was its apparent original direction, Second Officer Boveri asked Mr. Fischer to explain why he had come to see him. Mr. Fischer began to explain about some daily report that he gets (or produces, I don't recall exactly which) and how many times Second Officer Boveri's name appeared on it whenever there were delays or aircraft mechanical problems in Washington. I became physically uncomfortable at this time because I knew immediately what he was driving at. Steve Boveri obviously sensed the insinuation as well because he spoke up and began to explain how he performs his job and specifically his aircraft preflight duties. Mr. Fischer simultaneously continued, stating how "spikes" (as in a graph) were showing up on his reports everytime Steve worked. He was choosing his words carefully and deliberately but there was no mistaking that he was threatening and trying to intimidate Steve. He mentioned something about maintenance log book writeups that Steve had apparently made and how he, being a trained pilot, knew the difference between safety of flight items and those which did not affect safe aircraft operations. During the interchange between Steve and Mr. Fischer, Mr. Fischer was interrupted several times by phone calls. At one point while he was on the phone, several of us cautioned Steve that he was being singled out and we remarked how amazing it was that the company had now resorted to sending corporate officers from Miami to pressure and intimidate us. (It was common knowledge that Steve had already been called into the Washington Director of Flight office several times and questioned about his performance. Each time he was praised for being exceptionally thorough although it was obvious that the company was very displeased with the fact that Steve was discovering so very many mechanical problems with the aircraft. Undoubtedly the company would have preferred a far less dedicated and conscientious officer. Fortunately for his fellow pilots and the traveling public, Steve's professionalism never waned.) The table conversation continued with Mr. Fischer judiciously trying to tell Steve to lay off the mechanical writeups. He couldn't come right out and tell Steve that, but had he done so it would have surprised no one. His tone and direction was obvious. Although I had grown more tense and angry I tried to keep quiet. It was such a shock that what I had heard might someday happen was really taking place. The corporate directors of Eastern Air Lines were now dispatching their henchmen out to the bases to try to prevent us from doing our jobs. I guess Mr. Fischer started to feel the rising heat among us because he stated that he had to go but before leaving wished to speak to Steve in private out in the hall. I caught Steve's eye and shook my head trying to tell Steve not to go alone. Steve began to ask Captain Dolan to join them but Mr. Fischer interrupted saying that that was not necessary. The two of them then left the room. When Steve returned alone a few minutes later he told me that he had just been threatened by being told to watch himself in this politcally charged environment. He was being watched and to be careful.

I am outraged and yes even frightened that such a "meeting" has now taken place. A pilot is sworn to insuring the safety and well being of his passengers at all times. At Easternwe are being told in less and less subtle terms by non-pilot corporate executives to overlook aircraft problems and to fly the airplanes anyway. Instead of praising Steve for his integrity and attention to detail by insuring safety at Eastern, instead he is being castigated.

This statement I make voluntarily. Everything is absolutely true and the best of my recollection.

Charles A. Bradley
Charles A. Bradley

Witness: Ann Marie Cosgrove

Commonwealth of Virginia. City Co. of
Alexandria . Subscribed and
sworn before me this 11 day of [illegible] 198[illegible]
Martha Jane Wright
Notary Public My Comm. Exps. [illegible]-89

Mr. Mineta. We now have Mr. Luby and Betsy Murtagh and Janie O'Connell, who are members of the TWU.

Mr. Luby, you may proceed in your own fashion. Your statements will be made a part of the record.

TESTIMONY OF ART LUBY, TRANSPORT WORKERS UNION; BETSY MURTAGH, SAFETY CHAIRMAN, LOCAL 553, TRANSPORT WORKERS UNION; AND JANIE O'CONNELL, FLIGHT ATTENDANT, EASTERN AIRLINES

Mr. Luby. Okay. Given where we are today, I'd just as soon submit that for the record and make a few oral comments of my own and let Betsy Murtagh, who is the Safety Chairman for Local 553, representing all Eastern Airlines employees, say a few words; and Janie O'Connell, who is an Eastern Airlines flight attendant, also discuss an incident she was involved in.

First, I want to thank you, Mr. Chairman, for calling this hearing and also for the leadership role that you have taken in the question of aviation safety. You have been a friend of my organization and I'm glad that these hearings have been called.

In terms of the basic points we want to make, first I want to reiterate what Captain Duffy said. This is not a common problem in the airline industry. We do not have it as a matter of course in most carriers to discipline employees who make reports to the FAA. On Pan American, where I did observe that the flight attendants felt that they had been given problems and where we represent the maintenance workforce, that carrier is under a tremendous amount of economic pressure. They have not subjected us to the form of harassment that the Machinists have described at Eastern.

At American, they have gone further. American not only does not discourage or punish people for going to the FAA, but they have set up meetings between us and the FAA in order to air their concerns and make sure that we understood the regulatory requirements. So that is, in every sense of the word, not a coercive atmosphere.

As Captain Duffy pointed out, we have difficult negotiations with both of those carriers pending, but we have set the question of safety to one side and the question of economics and the collective bargaining forum on another side. That leaves us with Eastern.

John Kerrigan, who is the Director of the Air Transit Division, and I are close friends. John is a very temperate person, and I can always tell from the tenor of his voice on which days he's had to deal with Eastern Airlines.

I really would not care to be up here discussing Eastern's practices. I'd much rather be up here saying that we're making progress, but the fact is that we are continually running into serious problems on Eastern Airlines concerning punitive discipline, and particularly punitive discipline implemented concerning safety issues.

I guess what we find most distressing about this, we don't claim that every time we make a safety report we are right, or that everything that we ever say is right. There is an assumption over there that the problem lies with their employees, not that these are objective concerns and should be dealt with as such.

Last fall we had a long description about the incident in Tulsa, Kansas City, and Chicago with the airliner taking off with structural damage. We had the American Airlines mechanics—and we represent 23,000 persons on American Airlines—discussing what happened from their perspective, and some of the IAM people. And then Eastern came up and defended itself and said in essence that nothing wrong had happened.

Well, whatever you want to say about that incident, the job didn't get done. I would have felt a lot better about that company as a person who flies Eastern frequently if they had just come up and said, "Look, the job didn't get done. We'll do whatever is necessary to make sure it gets done the second time," instead of getting into crazy fights about whether or not they did anything wrong. The fact is that something wrong happened.

So that's in essence where we are. I'd like to have Betsy, who deals with these issues every day, give a brief statement, then Janie.

Ms. MURTAGH. My name is Betsy Murtagh. I am the National Safety Director for Local 553, representing the 7,000 flight attendants of Eastern Airlines. I am also a 16-year line flight attendant at Eastern.

If anybody had asked me five years ago what I thought about whistleblower protection for aviation employees who speak out about safety I would have said, "Don't waste your time or mine. Management wouldn't retaliate against employees. They are interested in safety, and we talk about it all the time." Sadly, things have changed.

Now, management's main concern is bottom-line operation. Our work environment is harsh and repressive, as noted by the fact that Eastern will fire flight attendants for being $2 or $3 short in their liquor or movie money. We are terminated while we are recovering from an on-the-job injury.

But this is not why I'm here. We need your protection because in the past year flight attendants at my carrier are being terminated, suspended, and intimidated when they raise safety concerns. Let me give you several examples of the sort of retaliation I'm speaking about. I stress that each incident is a real occurrence which can be documented. The only reason that we do not present the actual flight attendants involved is our fear for retaliatory discipline by the company, a very real reason at Eastern Airlines.

There was, of course, the well-publicized problem involving four flight attendants in Denver who walked off the airplane after observing crystallized snow on its wings. Now, understanding what these flight attendants were up against, this committee must realize that they had dealt with 30 minutes of passenger inquiry and concern about being deiced. All of this occurred exactly one month after the fatal Continental DC-9 crash in Denver under very similar weather conditions. None of the company people involved responded to these concerns.

Now, in hindsight it is easy to say that there may or may not have been a better way to handle this problem. But I doubt that anyone here can say that, given the pressures that these flight attendants were under and the atmosphere in that cabin in Denver, that they were unreasonable in what they did. In any case, the union was willing to sit down with company management and work out better procedures to handle passenger and crew concerns about this sort of situation. The company's answer was clear: a 30-day suspension for all four flight attendants involved.

I am going to sadly report right now that two of those flight attendants have already resigned.

Another incident several months ago—Janie O'Connell, who is here with me today, observed a serious problem in her shoulder restraint system on her aft jump seat of the Boeing 727–200, and was forbidden to write it up by the Atlanta-based manager of Inflight. Other supervisors attempted to pressure her to remain silent by threatening discipline. Only the intervention of the union and Janie's strength and individual courage and perseverance carried her through. And I would like to thank her for coming. It was so difficult today to get Eastern flight attendants here to discuss their personal experiences because the company supposedly could use other excuses to fire them.

Another incident was already examined last September at the Subcommittee on Investigations and Oversight. An Eastern aircraft with severe structural damage was allowed to fly from Kansas City to Chicago. There is no question that that aircraft could not have flown further, and in fact it was grounded in Chicago. There has already been testimony from American Airlines mechanics involved who refused to write a release for the airplane, as well as Eastern mechanics from Miami. In addition, it is already well known that one of the sources who informed the FAA about the improper release of the aircraft was the flight attendants. The flight attendants were told when they called the FAA hotline that the call would be kept strictly confidential and that their identities would never be revealed; yet, by the time Eastern management testified in front of Congressman Oberstar, they knew and had testified that the people who had reported the incident to the FAA were flight attendants. In subsequent testimony that same afternoon, the FAA repeated the statement and reaffirmed these assumptions.

The point is, why should flight attendants reporting to the FAA on something as serious and life-threatening as the release of an aircraft with structural damage have to fear for their jobs? The condition that they were reporting was real. The threat was real, and it is a matter that the FAA should have known about. To this day, though, the flight attendants remain deeply concerned that their identities should not be known because they are afraid of being terminated. And given Eastern's policies and practices, I have reason to believe that their fears are fully justified.

There is no reason why this should continue, and I ask that you please help change it.

Mr. MINETA. Ms. O'Connell?

Ms. O'CONNELL. My name is Janie O'Connell, and I have been a flight attendant for Eastern Airlines for over 20 years.

Last October I read that several flight attendants were injured in the Delta crash at Dallas because their seat restraints did not work properly. Based on this I checked my seat restraint and found that it did not fit me and could not be adjusted to fit.

I alerted the maintenance manager to this condition, and he simply told me there was nothing wrong with the restraint and there was nothing he could do about it. I was concerned, though, and I went to the FAA. The FAA inspector told me the seat restraint was certified, but there was a very definite problem and that I would likely be seriously injured in a rapid deceleration. Eastern supervisors were with me when I was told that by the FAA.

The next day, Eastern supervision that I was on a "one-woman crusade" and that my complaint was not legitimate. I was also told that I would be disciplined if I wrote this condition up on a cabin discrepancy report or otherwise delayed flights because of this.

A month later, another flight attendant made the same complaint. The flight was delayed, and on returning to Atlanta a supervisor met me as I was coming off the flight and blamed me for the delay. She was literally screaming at me.

Two days later at 6:00 o'clock in the morning on a Saturday, the same supervisor met me as I checked in for my flight and told me the base manager wanted to talk to me. The base manager told me not to write the matter up ever again, and further, to tell other flight attendants not to write it up. I want to make clear that the FAA had said that my concern was legitimate. Eastern was there at the time.

If the company had spent half as much time trying to remedy the problem as they have in trying to prevent me from reporting it, the whole matter could have been put to rest.

There used to be a time when we could reason these things out and work together to solve them. Now there seems to be an assumption on the part of Eastern management that the problem is with the employee rather than the problem being what the employee reports.

I have to admit, I do fear being disciplined for discussing this problem here today, but I see a great need for these bills to make the carriers take a more constructive approach to safety-related problems that are reported by employees.

Mr. MINETA. Very well. Thank you very much, Ms. O'Connell.

Ms. Murtagh, Is it your understanding of Eastern's policy that they will punish any employee who talks to the FAA? Or do they limit retaliation to cases in which they believe that the complaint is unjustified? In other words, are there any situations in which Eastern would not take action against an employee for giving information to the FAA without company authorization?

Ms. MURTAGH. I'm not quite sure I understand the question.

Mr. MINETA. Well, is Eastern's policy that they would punish anyone who talks to the FAA? Or do they just deal with those cases in which they feel that the complaint is unjustified?

Mr. LUBY. I can't say that we have an explicit written policy, but to the extent we do, our understanding of the policy—and we'll submit to you what documentation we have—is that the company will take punitive measures against any employee who does anything that holds them up to ridicule or causes bad publicity, and that could embrace a wide variety of things. In the case of Ms.

O'Connell, she has been threatened with discipline for filing a complaint with the FAA that was subsequently found to be legitimate. They have not said to us, though, that I'm aware of, that any complaint you file with the FAA or anything you communicate to the FAA will be the cause for discipline; however, I can assure you that all of our flight attendants have precisely that fear.

[The documentation to which Mr. Luby referred follows:]

Interoffice Correspondence **EASTERN**

To: Boston Based Flight Attendants **Address:** BOSFI

From: Peter Wilander **Address:** BOSFI

Subject: UNPROFESSIONAL BEHAVIOR **Date:** December 18, 1987

On December 11, 1987, Tom Matthews, Senior Vice President Human Resources, sent a teletype to all employees regarding acts of unprofessional behavior. The message is reproduced below and will remain posted on the Coordinators' window.

> "IN LIGHT OF RECENT INCIDENTS OF UNPROFESSIONAL BEHAVIOR HARMFUL TO EASTERN AND COOPERATIVE EMPLOYEE RELATIONS, ALL EMPLOYEES ARE REMINDED OF COMPANY RULES PROHIBITING EMPLOYEE ACTIONS WHICH ATTACK OR RIDICULE EASTERN OR THE MEMBERS OF EASTERN'S MANAGEMENT. SUCH ACTIVITY WILL NOT BE CONDONED AND WILL BE CAUSE FOR DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION."
>
> "THIS IS TO INFORM ALL EMPLOYEES THAT WHILE ON DUTY OR IN UNIFORM THEY MAY NOT WEAR OR DISPLAY ANY MESSAGE (BUTTON, STICKER, DECAL, T-SHIRT, ETC.) WHICH EXPLICITLY OR IMPLICITLY ATTACKS, RIDICULES OR DEMEANS EASTERN OR ANY MEMBER OF ITS MANAGEMENT."
>
> "THIS RULE WILL BE ENFORCED CONSISTENTLY BY ALL DEPARTMENTS."

Pete

Peter Wilander

2

EASTERN

December 17, 1987

ATTENTION ALL FLIGHT ATTENDANTS:

In light of recent incidents of unprofessional behavior harmful to Eastern and cooperative employee relations, all employees are reminded of Company rules prohibiting employee actions which attack or ridicule Eastern or the members of Eastern's Management. Such activity will not be condoned and will be cause for disciplinary action up to and including termination.

This is to inform all employees that while on duty or in uniform they may not wear or display any message (button, sticker, decal, t-shirt, etc.) which explicitly or implicitly attacks, ridicules or demeans Eastern or any member of its Management.

This rule will be enforced consistently by all departments.

Kay Dahlen
Director
In-Flight Services

Mr. Mineta. Well, let me go back to Ms. O'Connell.

Is this the case involving the aft jump seat restraint?

Ms. O'Connell. Yes, sir.

Mr. Mineta. And what is it that the company was saying? That you ought not to write it up?

Ms. O'Connell. They ordered me not to write it up on a cabin discrepancy report.

There were a few instances where one flight was canceled because of them. Two days later we had the same type of restraint system. Again we brought it to the Captain's attention, who brought it to the attention of maintenance. At that time maintenance did put the seat out of operating order and blocked two passenger seats for us to use. They called Miami. Miami said, "We will not give you a CI. There is nothing wrong with those seats, and the flight attendants will either refuse the trip, be replaced, or sit on them." That was it, and that is where it has stood since then.

I would like to say that the FAA inspector did go to Miami. It has been determined that there is a definite problem, that in a rapid deceleration somebody as short as I am would probably break their shoulders when we finally come to a stop, and that is where it still is today. I have been flying that airplane this month. I tried to avoid it this past few months. This month I ended up on it. The shoulder restraints are still in the same category that they were. Eastern admits that there is a problem, but they have not changed them.

Ms. Murtagh. They are in the process of changing them through the hard work and efforts of Acting Principal Maintenance Inspector Bill Murphy in Miami.

Mr. Mineta. Now, the bills that have been introduced differ in establishing the agencies that would review employee complaints about whistleblowing. In one instance, there would be FAA review, and in two of the bills, there would be review by the Department of Labor.

Do you have any views as to which agency should review these kinds of complaints, Mr. Luby?

Mr. Luby. Well, I think I concur in the general judgment that I believe has been expressed all day, that we prefer the Department of Labor who has some expertise in this area, although I have to say that I wouldn't mind it if the FAA did develop some expertise in the area of employee relations. [Laughter.]

Mr. Mineta. With or without legislation?

Mr. Luby. Right. [Laughter.]

But I think we have a preference to have the Department of Labor handle it.

Mr. Mineta. Congressman Kleczka's bill provides that when an employee files a frivolous complaint, the reviewing agency may award attorneys' fees to the employer. Any comments on this provision?

Mr. Luby. I see no reason why there really has to be particular protection against bad faith complaints written into the bill. As I said in our written testimony, we strongly disapprove of anyone filing harassing or bad faith complaints, and I have to say we could probably live with that provision. On the other hand, I have not seen any record develop before this committee that this has been a problem for anybody, that in fact there have been enormous amounts of bad faith complaints.

As a general matter, where there are developed procedures for complaining, we encourage our people to go to the company. We worked with American to develop very sophisticated internal procedures.

So while I have to say we could live with that provision, I'm not enthusiastic about it.

Mr. MINETA. What about one of the bills that has the provision that the employee must notify the company of an unsafe practice before contacting the FAA, and then the company is given 30 minutes to respond to that employee?

Mr. LUBY. Well, I would have to do more investigation about the practicalities of that. As I indicated earlier, as a general matter we encourage our people to go to the company first; so as a matter of philosophy, I agree with that. The company should have a chance to remedy it. That's also the quickest way to get a problem remedied. But when you're dealing with a poor labor relations milieu and going to the company first will result in a lot of problems and harassment of the employees, even with these protections, then I don't know whether that's practical.

As I said, I'd have to see whether the notification provisions in this are really practical.

Ms. O'CONNELL. Sir, may I comment on that?

Mr. MINETA. Ms. O'Connell?

Ms. O'CONNELL. I did go to the company first, and it went on for, I would say, two weeks to a month.

Mr. MINETA. This involved one airplane?

Ms. O'CONNELL. No, there are 25 of the airplanes that have those. I was flying turn-arounds at that time, and it seemed like every day we were coming up with one of those airplanes. This went on for about two weeks.

I was met by in-flight supervisors, two of them, every day and told not to write it up, and just general harassment——

Mr. MINETA. Did they say, "Well, we know it's not working properly"——

Ms. O'CONNELL. No, they would not even admit it. They would not even admit that there was a problem. They said there was nothing wrong with it.

So the other flight attendant involved and I contacted the FAA and an inspector did come out and meet one of our flights. What happened in that is that it was a flight continuing on out of Atlanta. I believe it was going on up to New York. The flight was delayed. I was given the crew delay and told that the next time there would be disciplinary action when I got involved over these shoulder restraints and a delay was forthcoming for it.

[Supporting documentation submitted by Ms. O'Connell follows:]

FACTS

FLIGHT ATTENDANT COMMENT SHEET 3
IN-FLIGHT REPORT
14-CC-1472 OPR-980 REV 1-85

EASTERN
IN-FLIGHT SERVICES

FLIGHT 879	DATE 4-7-88
FROM BOS	TO DCA
A/C TYPE 727S	A/C NO. N8856E

NOTES: FACTS REPORTS SHOULD NOT BE USED FOR THE FOLLOWING:

- **Catering/Dining Services items should be on the yellow catering sheet.**
- **Complimentary liquor information should be on the Beverage Control Report.**
- **Customer injury or illness should be on the Customer Injury/Illness form.**

Page 1 of 2

- If reporting mechanical discrepancies or aircraft interior damage, was a Cabin Discrepancy Report (CDR) completed? ☐ Yes ☐ No

LEGIBLE, SPECIFIC AND FACTUAL INFORMATION IS NECESSARY FOR EFFECTIVE CORRECTIVE ACTION

Guess what folks - I'm back on the stretch Boeing this month and I'm finding airplanes that have non-adjustable shoulder harnesses on the aft F/A seat. You know, the kind that will probably break our necks and/or our shoulders if the plane comes to a sudden stop!

In December I was assured by an EAL base manager that:

1) A CAMI Report shows these harnesses to be safe
2) That the harnesses were to be changed, but it would take time
3) That I am NOT to write these harnesses up on a Cabin Discrepancy Report and that I am to discourage other F/A's from doing it

MY QUESTIONS TO YOU:

1) IF there is a CAMI report showing these harnesses to be safe why was I told the harnesses would be changed?
2) TWICE I have requested a copy of the CAMI report and I have not received it WHY??
3.) FOUR months have ~~to~~ now

FLIGHT ATTENDANT NAME - PLEASE PRINT: J B O'CONNELL
EMPLOYEE NO.: 09006
BASE: ATL

CAPTAIN'S SIGNATURE
EMPLOYEE NO
BASE

IN-FLT. REPORT ADMINISTRATION
File #
Forwarded:

MOISTEN & STICK

FACTS

FLIGHT ATTENDANT COMMENT SHEET 4

IN-FLIGHT REPORT
14-CC-1472 OPR-880 REV. 1-86

EASTERN
IN-FLIGHT SERVICES

FLIGHT 879	DATE 4-7-88
FROM BOS	TO DCA
A/C TYPE 727S	A/C NO. N8856E

NOTES: FACTS REPORTS SHOULD NOT BE USED FOR THE FOLLOWING:

- Catering/Dining Services items should be on the yellow catering sheet.
- Complimentary liquor information should be on the Beverage Control Report.
- Customer injury or illness should be on the Customer Injury/Illness form.

Page 2 of 2

- If reporting mechanical discrepancies or aircraft interior damage, was a Cabin Discrepancy Report (CDR) completed? ☐ Yes ☐ No

LEGIBLE, SPECIFIC AND FACTUAL INFORMATION IS NECESSARY FOR EFFECTIVE CORRECTIVE ACTION

passed and we still have these harnesses that are hazards to our safety - how much time?

4) Is it true EAL is not ~~[illegible]~~ changing these harnesses because they want Boeing to pay for it?

5) Why am I TOLD not to write these up on a CDR? [They are discrepencies - they are safety hazards]

CC: TWU SAFETY CHAIRMAN
FAA

IN-FLT. REPORT ADMINISTRATION
File # ____
Forwarded: ____

FLIGHT ATTENDANT NAME - PLEASE PRINT	EMPLOYEE NO.	BASE
J B O'CONNELL	09006	ATL

CAPTAIN'S SIGNATURE ____ EMPLOYEE NO. ____ BASE ____

MOISTEN & STICK

Mr. **Mineta**. Thank you very much.

Mr. Gingrich?

Mr. **Gingrich**. I only have one question.

Of all of the airlines that you work with, does any other airline give you a problem? Does any other airline make you worry that if you report safety problems you will be harassed?

Mr. **Luby**. The answer, in all honesty, is no.

Mr. **Gingrich**. Thank you.

Ms. **Murtagh**. I'd like to make a comment. It's just to say how different things are in the last few years——

Mr. **Gingrich**. Let me just cut in for one second. I met the other day with Frank Borman and we were talking about the system, and it seemed to me that while there are a lot of people who have a lot of different opinions about what he did and didn't do at Eastern while he was there, that he was a man who loved flying and he was a man who understood airlines and aviation and airplanes as distinct to just being oriented to the bottom line.

Was there any kind of this feeling during his years as president that safety was not as important as other characteristics?

Ms. **Murtagh**. No. The in-flight department of Eastern Airlines was fully committed to safety.

Mr. **Gingrich**. Thank you.

Thank you, Mr. Chairman.

Mr. **Mineta**. Thank you very much, Mr. Luby, Ms. Murtagh, and Ms. O'Connell for taking the time to be here.

Ms. **Murtagh**. Thank you.

[The prepared statement of the Transport Workers Union of America, represented by Mr. Luby, Ms. Murtagh, and Ms. O'Connell, follows:]

Transport Workers Union of America

Affiliated with American Federation of Labor and Congress of Industrial Organizations

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TESTIMONY OF JOHN KERRIGAN, DIRECTOR, AIR TRANSPORT
DIVISION, TRANSPORT WORKERS UNION OF AMERICA;
BEFORE THE SUBCOMMITTEE ON AVIATION, COMMITTEE ON
PUBLIS WORKS AND TRANSPORTATION REGARDING
H.R. 4023, H.R. 3812, AND H.R. 4113

Mr. Chairman, my name is John J. Kerrigan and I am Director of the Air Transport Division of the Transport Workers Union of America, AFL-CIO. TWU represents some 50,000 employees in the airline industry including mechanics, fleet service personnel, flight attendants and dispatchers. We represent employees on most major scheduled domestic carriers including American Airlines, Pan American World Airways, Eastern Airlines, Continental, and Northwest.

Last October I testified before an Oversight and Investigations Hearing chaired by Congressman Oberstar that the Federal Aviation Act and the Federal Air Regulations should be amended to protect those employees who honestly and frankly discuss aspects of a carrier's operation which may create potential hazards to the flying public from retaliation by the carrier. At that time, TWU also stressed that, at least for our Union, the sort of retaliation is not a common problem. Indeed, at American and Pan Am--where we represent the maintenance work forces--we polled our membership as to whether management had ever disciplined or otherwise retaliated against one of our members for communicating or filing a complaint with the FAA. We found no evidence that either carrier had ever taken such action.

Unfortunately, this is not necessarily the case throughout the entire industry. TWU represents some 7,000 flight attendants at Eastern Air Lines. We have had several unfortunate incidents over the past few years, where flight attendants were disciplined or threatened with discipline for expressing safety related concerns. Betsy Murtaugh, the Safety Chairman for TWU Local 553, will discuss these incidents in greater detail. However, I note that last fall Eastern itself testified before the Oversight and Investigations Subcommittee to the effect that it would punish employees who made what the carrier viewed as unwarranted complaints to the FAA.

We regard the so-called "whistle blower" bills now being considered by the Committee as a measured and judicious response to a relatively limited problem. The basic problem that these bills address goes beyond labor relations problems at a single carrier. The real difficulty in the present structure of the Federal Aviation Act and the Federal Air Regulations is that these laws establish a responsibility among airline personnel--particularly certificated personnel--for dual loyalty to both the carrier and the flying public without establishing corresponding protections for those who meet these responsibilities. For example, a mechanic or dispatcher who is aware of a condition creating potential endangerment is, if the condition is not properly remedied by the carrier, subject to potential certificate action if he or she doesn't report the matter to the FAA. Similarly, while flight attendants are not certificated this class of employees obviously has safety expertise and experience and should be considered responsible for reporting potential hazards. These bills simply mandate that the FAA, in recognition of the loyalty and responsibility it expects of aviation personnel, will return that loyalty and protect those who raise safety concerns with the agency from discipline or retaliation.

To be sure, we do not believe that it is proper for any employee to file a bad faith complaint with the FAA against a carrier or to make allegations to the FAA to harass a carrier. However, contrary to the statements of certain airlines, this sort of misuse of the FAA complaint procedures is, in our experience, far more unusual than the sort of carrier retaliation these bills address. Filing a complaint with the FAA, and being available for the investigation, is normally a time consuming and difficult process. We believe it is most unusual for an employee to subject him or herself to the sort of scrutiny occasioned by making an FAA complaint if they are not sincerely convinced that there is a hazard which must be remedied.

In short, TWU supports passage of a whistle blower Protection Act for aviation employees. We would hope any bill which passes would protect all classes and crafts of employees.

Mr. **Mineta**. Now we would like to call on Mr. Jim Landry, the Senior Vice President and General Counsel of the Air Transport Association of America.

Mr. Landry, your statement will be made a part of the record.

Before you proceed in your own fashion, I would like to call on Mr. Gingrich.

Mr. **Gingrich**. I appreciate the Chair indulging me. Unfortunately I have got to go to another meeting, and I just wanted to ask you if I might, Mr. Landry, before I left, because I want to get this in the record—I've read your testimony and I sympathize with some of your concerns, but there were several documents submitted today about specific problems involving, for example—again I will just quote, as I did earlier—somebody who was "assessed a 10-day disciplinary suspension for encouraging mechanics to report alleged safety or procedural violations to the FAA." And you've heard, of course, the testimony today.

Doesn't it strike you—and I would stipulate as I said earlier that, unfortunately for good businesses, laws tend to be written for bad businesses—doesn't it strike you that the overwhelming weight of evidence today is that there are at least some occasions in which the safety of the public requires that we protect those who are willing to report on safety problems?

Mr. **Landry**. Yes, sir, Mr. Gingrich.

I should clarify for the record that we are not opposed to whistleblower legislation, but we do think that several things ought to be added, particularly a good faith requirement both for the reports and the complaints. But we do not oppose whistleblower legislation, properly framed.

Mr. **Gingrich**. I just wanted to get that question.

I will say to you as I said earlier, I do hope that we will proceed with something like this this year. I would certainly expect to work closely with ATA as well as all the other interested parties to produce a broadly acceptable and hopefully fairly sophisticated piece of legislation that does meet all the different interests in a fair way.

But I appreciate your testimony and I apologize for having to leave. I thank the Chairman.

Mr. **Landry**. Thank you, sir.

Mr. **Mineta**. Mr. Landry, you may proceed in your own fashion.

TESTIMONY OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. **Landry**. Thank you, Mr. Chairman. I appreciate the opportunity to discuss with the subcommittee the views of ATA about the three pending bills, H.R. 3812, H.R. 4023, and H.R. 4113, that would protect airline industry employees who report to the Federal Government what they regard as safety violations, or take other actions as a result of their belief that a threat to aviation safety exists.

Airlines have an overriding concern for safety. They realize better than anyone that the lives of passengers and crew depend on proper maintenance and operations practices. Part of the process of providing safe airline service involves creating an environment in which the safety concerns and suggestions of employees can be expressed.

Our members do precisely that. They have established lines of communication by which such concerns and suggestions can be expressed to management. For example, a pilot who had such a suggestion would communicate it to his or her chief pilot. Those types of communications can be productive if they represent good faith expressions of views. If they are not of that nature, they can be disruptive and potentially inimical to safe practices.

Each of the bills before you would establish protected activities and would define protected categories of employees. In addition, each would authorize an employee to file a complaint for alleged discriminatory management actions stemming from the protected activities. Each would assign to a Federal official the responsibility of reviewing the complaint, determining whether a violation had occurred, and, if a violation were found, to order remedial action to be taken by the employer. Depending upon the bill, that reviewing official would either be the Secretary of Labor or the Administrator of the FAA.

A stated common objective of these three bills is to encourage air carrier employees to report safety hazards without fear of reprisal by their employers. In assessing the need for legislation in this area, the subcommittee should bear in mind that collective bargaining agreements in our industry typically provide means to review disciplinary actions taken against employees. Thus, employees of larger airlines typically enjoy contractual safeguards that enable them to grieve disciplinary actions directed at them.

In view of these contractual and noncontractual procedures, we do not believe that as a practical matter employees of such air carriers require the protection of whistleblower legislation. We recognize, however, that not all employees in the airline industry possess such protection. We realize that this lack of industry-wide protection, coupled with the existence of similar legislation in several other industries, has prompted the subcommittee to consider the three whistleblower bills. In the interests of the subcommittee's time here today, I will focus my comments on the broad, general views of the airline industry on your legislative undertaking which, I would again clarify for the record, we do not oppose. I will turn in particular to some major consequences which can and should be avoided in the legislation which your subcommittee advances.

As a general matter, we submit that whistleblower legislation must not be drafted in such a way that the protection afforded to employees impedes or diminishes the effectiveness of standard maintenance or operational procedures and practices. Such uniform procedures and practices are the essence of safe air carrier operations. Although we do not wish to thwart employees' suggestions for improving those practices, whistleblower legislation should not encourage autonomous deviation from them. Moreover, such legislation should not discourage air carrier management from taking disciplinary action against employees when necessary to achieve compliance with standard practices which have been developed to ensure safety in day-to-day air carrier operations.

We also strongly believe that whistleblower legislation should not create another forum for airing labor-management disputes. Existing legal and collective bargaining processes have been developed to resolve such disputes. We are concerned that no matter how appropriate the motivation is for such legislation, an unintended consequence of it may be that it provides another medium in which labor-management differences are voiced. Were that to occur, the traveling and shipping public could, for unwarranted reasons, lose confidence in the air transportation system.

Consequently, we believe that any whistleblower legislation that is enacted should permit penalization of employees who abuse its protections by pursuing reports and complaints that are not made in good faith. Such a provision would reflect the serious respective responsibilities that labor and management have in this process.

In short, Mr. Chairman, we ask this subcommittee in its deliberations to bear in mind that airline managements, as well as our labor force, the FAA, this subcommittee, and many others in the public sector are dedicated to the assignment and maintenance of safety as the highest priority in air commerce. To that end, our industry will continue to enhance the lines of communication that I have alluded to, to ensure that serious safety concerns are conveyed swiftly from the front lines of our maintenance and operations staffs to the command centers of our airline managements.

As you seek to supplement that network with protection against reprisals for employee reports to the Federal Government, we urge you to ensure that any ultimate legislation also protects against a counterproductive expenditure of invaluable time and resources by both the public and private sectors in pursuing both reports and complaints that are not put forward in good faith.

Mr. Chairman, my prepared statement also addresses a number of the more detailed aspects of the three bills before you. We ask the subcommittee to consider those views as well as you proceed in this matter.

Again, we thank you for this opportunity to offer our thoughts on whistleblower legislation, and I will be pleased to answer any questions you may have.

Mr. MINETA. Very well. Thank you very much, Mr. Landry.

First of all, let me just ask, what are the general policies of airlines as they relate to employee rights to report information to the FAA? Do they have a practice of saying, "Yes, you can go ahead and do that, but you have to have prior authorization from the airline"? Or, "No, you can do this at free will"? Is there a general policy among the airlines?

Mr. LANDRY. I would say, as a general practice, they prefer that the particular safety concern is brought first to the attention of the airline managements so that corrective action can be taken as quickly as possible. That would be the general practice. But to the best of my knowledge most of the carriers, of course, have collective bargaining agreements with their employees that do provide ultimately that the test for a suspension or firing or for disciplining an employee will be whether that was done for just cause; that is, either an explicit or a very implicit provision in the collective bargaining agreements. And I think the body of case law that has been built up by the Systems Board of Adjustments' arbitrators and the ALJ's in most of these cases would suggest that you have to have good or just cause, and that if there is just cause, that the suspension or firing would be considered unlawful or a violation of the employee's rights.

Mr. MINETA. What about the airlines where you may not have representational units or no collective bargaining agreements? What should be done in those instances?

Mr. LANDRY. Well, as I indicated, we think that this legislation very clearly would fill a gap there, that in those circumstances this whistleblower legislation which would allow the employees after hopefully pursuing their line of communication within their carriers to try to correct the flaw and alleviate the safety concern as quickly as possible, that they should then be free to turn to whichever body this committee decides it ought to go to.

Mr. MINETA. Let me go back. Even where there are collective bargaining agreements—how much protection really is that? We had a statement today, something about "It's probably going to take me 18 months to go through arbitration".

Mr. LANDRY. I was concerned by that estimate of time. I was not aware that it took that long for the arbitration in such instances to be totally consummated. But in any event, the legislation that you probably will draft here will provide another option of taking such a grievance to the Department of Labor or the FAA, whichever you choose.

Mr. MINETA. Your testimony states that whistleblower legislation should not prevent disciplinary action against employees who deviate from standard company practices." If an employee believes that an airline's practices are not safe, should he or she be permitted to contact FAA first about that problem?

Mr. LANDRY. I think ultimately, if indeed the management still disagrees—and I'm assuming this is an FAA-approved practice that is being objected to—but if the management still disagrees that a change is in order, I think that yes, the employee should have the opportunity of trying to change that FAA approval, to disabuse them of the notion that this is the way that practice ought to be conducted. That's a proper avenue for them to follow. But again, I do think that the first resort ought to be to the airline management.

Mr. MINETA. You suggest that any legislation should require that an employee's contact with the FAA must be in good faith to be protected. Do you mean by this that the employee must sincerely believe that there is a safety problem? Or would you impose an additional requirement that the employee must have a reasonable basis for believing that there is a safety problem?

Mr. LANDRY. I think frankly, both. I think that both a reasonable basis for that belief and the belief that it does constitute a safety problem.

I was struck today by the colloquy about the pros and cons of Mr. Burnley's statement. One of the things I noticed was that a great many of those postcards apparently—and I have not seen the postcards as you have—but a great many of them were not documented. It struck me that if you did put up—for example, looking at H.R. 4023—if you put up in the initial Section 1119 that is offered there a requirement that the employee has taken one of these protective actions in good faith, it would seem to me that the employee, recognizing that his action was thereby protected under this legislation, would be much more prone to fully document whatever his concern was. I think it could have an ameliorating effect with regard to that particular problem.

Mr. MINETA. Your testimony supports a 30-day period for an employee to file a complaint. I'm wondering whether or not this is a relatively short period of time for an employee to be able to, let's say, consult his or her union or his or her attorney, then figure out what their rights are and how they should pursue a whistleblower-type case.

Mr. LANDRY. I would stress, of course, that that's 30 days from the time of the complaint about an alleged violation by management; that is, that the management took a discriminatory action against an employee. We were guided on that particular issue, Mr. Chairman, by the fact that other comparable legislation in other fields—the Clean Water Act and so forth—provides for a 30-day period, so we were modeling ourselves after that rather than the 180 days. And again, it's after the violation, not after the initial concern about safety.

Mr. MINETA. In your testimony you oppose allowing the Secretary of Labor to award compensatory damages to a complainant if there is a finding in favor of the complainant. By compensatory damages do you mean back pay and attorneys' fees? If these cannot be awarded in an administrative proceeding, how should they be awarded?

Mr. LANDRY. Really, we thought—it would seem to me that back pay would be something that would be within the Department of Labor's ability to assess, but other elements of compensatory damage might be far more difficult. But certainly not back pay and attorneys' fees.

Mr. MINETA. Would attorneys' fees be included as part of that, normally?

Mr. LANDRY. Attorneys' fees are not a normal outcome of litigation in this day and age, but since we're asking for it on the other side of the coin I'd be a little bit bashful about suggesting that it should be a one-way street.

Mr. MINETA. What's good for the goose? [Laughter.]

Mr. LANDRY. That's right. I'm trapped. I'm hoisted by my own petard here.

Mr. MINETA. Mr. Ziegler, do you have any questions in the absence of Mr. Gingrich?

Mr. ZIEGLER. No questions, Mr. Chairman.

Mr. MINETA. Mr. Landry, thank you very much for your testimony.

Mr. LANDRY. Thank you, Mr. Chairman.

[Mr. Landry's prepared statement follows:]

STATEMENT OF
JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL OF THE AIR TRANSPORT ASSOCIATION OF AMERICA BEFORE THE AVIATION SUBCOMMITTEE, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE U.S. HOUSE OF REPRESENTATIVES
APRIL 27, 1988

Good morning. My name is James E. Landry. I am Senior Vice President and General Counsel of the Air Transport Association of America. I appreciate the opportunity to discuss with the Subcommittee the views of ATA about three pending bills -- H.R. 3812, H.R. 4023, and H.R. 4113 -- that would protect airline industry employees who report to the Federal Government what they regard as safety violations, or take other actions as a result of their belief that a threat to aviation safety exists.

Each of these bills would establish protected activities and would define protected categories of employees. In addition, each would authorize an employee to file a complaint for alleged discriminatory management actions stemming from the protected activities. Each would assign a federal official the responsibility of reviewing the complaint, determining whether a violation had occurred, and, if a violation were found, to order remedial action to be taken by the employer. Depending upon the bill, that reviewing official would either be the Secretary of Labor or the Administrator of the Federal Aviation Administration.

/Airlines have an overriding concern for safety. They realize better than anyone that the lives of passengers and crew depend on proper maintenance and operations practices. Part of the process of providing safe airline service involves creating an environment in which the safety concerns and suggestions of employees can be expressed. Our members do precisely that. They have established lines of communication by which such concerns and suggestions can be expressed to management. For example, a pilot who had such a suggestion would communicate it to his or her chief pilot. Those types of communications can be productive if they represent good-faith expressions of views. If they are not of that nature, they can be disruptive and potentially inimical to safe practices.

A stated common objective of these three bills is to encourage air carrier employees to report safety hazards without fear of reprisal by their employers. In assessing the need for legislation in this area, the Subcommittee should bear in mind that collective bargaining agreements in our industry typically provide means to review disciplinary actions taken against employees. Thus, employees of larger airlines typically enjoy contractual safeguards that enable them to grieve disciplinary actions directed at them. In view of these contractual and noncontractual procedures, we do not believe that employees of such air carriers require the protection of whistleblower legislation. We recognize, however, that not all employees in the airline industry possess such protection.

We realize that this lack of industrywide protection, coupled with the existence of similar legislation in several other industries, has prompted the Subcommittee to consider the three "whistleblower" bills. In an effort to assist the Subcommittee in its deliberations, we offer the following views.

As a general matter, we firmly believe that whistleblower legislation must not be drafted in such a way that the protection afforded to employees impedes or diminishes the effectiveness of standard maintenance or operational procedures and practices. Such uniform procedures and practices are the essence of safe air carrier operations. Although we do not wish to thwart employees' suggestions for improving those practices, whistleblower legislation should not encourage autonomous deviation from them. Moreover, such legislation should not discourage air carrier management from taking disciplinary action against employees, when necessary, to achieve compliance with standard practices which have been developed to insure safety in day-to-day air carrier operations.

We also strongly believe that whistleblower legislation should not create another forum for airing labor-management disputes. Existing legal and collective bargaining processes have been developed to resolve such disputes. We are concerned that no matter how appropriate the motivation is for such legislation, an unintended consequence of it may be that it provides another medium in which labor-management differences are voiced. Were that to occur, the travelling and shipping public could, for unwarranted reasons, lose confidence in the air transportation system. Consequently, we believe that any whistleblower legislation that is enacted should permit penalization of employees who abuse its protections by pursuing complaints that are not made in good faith. Such a provision would reflect the serious respective responsibilities that labor and management have in this process.

The whistleblower bills that are before the Subcommittee are different in several important respects. The most notable differences concern categories of protected employees and protected actions, the designation of the government official who is to review employee complaints of discriminatory personnel action stemming from whistleblower activities, and the reviewing official's remedial powers. Some of these differences are significant. The bills consequently must be examined with care and their implications clearly understood.

Each bill enumerates the categories of protected activities. There are variations among them, which we discuss below. Of most significance, however, is that none of the bills affirmatively requires that the protected activity be undertaken in good faith.[1] That means that any activity falling within such a category, even if unreasonable and malicious, could be interpreted as legally protected and therefore not subject to disciplinary action. Such a result would be highly undesirable. To guard against it, the description of protected activities should be subject to a good faith requirement.

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[1] We recognize that H.R. 4023 would authorize the Secretary of Labor to award to the prevailing employer a reasonable attorney's fee if the Secretary finds that the complaint is frivolous or has been brought in bad faith. (§1119(b)(3)(C).) We support that provision.

The scope of the protected activities that each bill would create causes us concern. H.R. 3812 would protect an individual who has "attempted to ensure compliance by such person with aircraft safety laws or practices . . ." (§1119(a)(1)(D).) The use of the term "practices" creates a troublesome ambiguity. An air carrier may be operating according to a Federal Aviation Administration-approved procedure with which an employee has a disagreement. For example, the noise-abatement takeoff procedures at Washington National Airport. An employee -- in this illustration, a pilot -- should not enjoy the freedom to deviate from such a procedure because he or she believes that there is a more appropriate operating practice. (Obviously, if there were an imminent threat to persons or property deviation would be appropriate.) Hence, this provision of H.R. 3812 should refer to safety laws, regulations or federally mandated or approved procedures, and not simply to safety laws or practices.

Similarly, H.R. 4113 would protect an employee who discloses safety-related information to a government official if the employee first reported the information to his or her employer and, except if the employee is a pilot, "allows the employer 30 minutes within which to provide to the employee a written response which is satisfactory to the employee . . . ." (§613(a)(1).) That provision has two serious shortcomings. First, the employer response process is unworkable. Airline management cannot be expected to interrupt their activities so as to, within 30 minutes, prepare a written response concerning a matter that could be of considerable complexity. That condition is so unrealistic as to be a meaningless condition on the protection that H.R. 4113 would create. Second, it would eliminate what we believe should be an essential distinction in any whistleblower legislation. There is a fundamental difference between protecting a good-faith communication about safety from an airline employee to a governmental regulator or Member of Congress, and elevating in legislation the complainant to the status of decisionmaker. Air carriers, as holders of air carrier operating certificates, have the responsibility to conduct their operations safely. To do so, they must operate in a structured environment in which decisions are made by appropriate personnel. Fractionalization of safety decisionmaking in air carriers cannot be tolerated.

The categories of covered employees that H.R. 4113 would create would be unnecessarily expansive. A protected employee is described in that bill as a person who is not employed by the Federal Government and whose employment responsibilities "relate directly or indirectly to (A) the maintenance or operation of civil aircraft; or (B) the provision of services relating to air transportation." This description would encompass employees who do not perform safety related functions. Two elements of it would create that result: the use of the "directly or indirectly" language and the inclusion of employees who merely provide services relating to air transportation. By way of illustration, under H.R. 4113 an airline reservations agent would be a protected employee. We do not believe that such categories of employees should be included in a statutory protection system. Instead, the application of that type of system should be limited to employees who perform maintenance or operations functions.[2]

Each bill would provide a review procedure for a covered employee who believes that he or she had been subjected to a personnel action that violated the statutory protections. H.R. 3812 would assign to the Administrator of the Federal Aviation

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[2] H.R. 3812 would also protect employees who controlled, or supervised or assisted in the control of, air traffic. (§1119(a)(2)(C).) Since this category principally refers to employees of the Federal Government, we express no view about it. We note, however, that the Civil Service Reform Act of 1978 prohibits federal departments and agencies from retaliating against employees who disclose information that they reasonably believe indicates a violation of a law or regulation, or the existence of a substantial and specific danger to public health or safety. (5 U.S.C. §2302(b)(8) (1982).)

Administration the responsibility to conduct that review. H.R. 4023 and H.R. 4113, *in contrast, would assign that* responsibility to the Secretary of Labor. The issue of who should perform the review of a discrimination complaint is not easily resolved. The advantage of assigning that task to the Secretary of Labor is that it removes the FAA from a process that, unfortunately, may prove to be more often impelled by labor-management disputes than by safety concerns. However, the reviewing official presumably will be required to evaluate complaints involving very technical and sometimes arcane matters. This suggests that, if the Secretary of Labor is that official, means should be provided to permit the FAA to participate in the development of technical issues for the hearing record.

H.R. 4023 would permit the filing of a complaint up to 180 days after the alleged discriminatory act. H.R. 3812 and H.R. 4113 would require that the complaint be submitted within 30 days of the alleged act. We favor a 30-day period in which complaints are to be filed. Allegations of retaliatory managerial action should be raised and resolved as soon as practicable. This is especially true because the complainant does not need an extended opportunity to develop pertinent facts or understand their implication. We note that whistleblower provisions in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Energy Reorganization Act of 1974, and the Clean Water Act of 1972 use that period. (42 U.S.C. §9610(b) (1982); 42 U.S.C. §5851(b) (1982); 33 U.S.C. §1367(b) (1982).)

H.R. 4023 and H.R. 4113 would require that the Secretary of Labor, who both bills would designate as the reviewing official, award compensatory damages to the complainant if he or she found in favor of the complainant. That requirement should not be included in whistleblower legislation. The administrative hearing that the reviewing official would conduct does not provide the procedural and evidentiary framework in which to determine compensatory damages.

One other element of the remedial provisions of H.R. 3812, H.R. 4023, and H.R. 4113 deserves serious attention. Each bill would require that, if the reviewing official determined that a violation of the statutory protections had occurred, he or she order the employer to cease violating the law. (§1119(b)(4); §1119(b)(3)(B); §613(d)(1).) H.R. 4023 and H.R. 4113 would require that the Secretary of Labor order the employer "to take affirmative action to abate the violation." (§1119(b)(3)(B); §613(d)(1).) That language could be interpreted as authorizing the Secretary of Labor to order an air carrier to modify its operations or maintenance procedures or practices. That result is especially possible under H.R. 4113 because it has a subsequent provision that states

> "the Secretary of Labor shall carry out

> all functions under this Act [i.e., the Federal Aviation Act] with respect to such proceedings which would otherwise be the responsibility of the Administration [of the Federal Aviation Administration]."

This language suggests that H.R. 4113 would enpower the Secretary to exercise substantive safety-related authority. The Secretary of Labor, however, does not have the expertise to issue orders that could affect air carrier operations or maintenance procedures or practices. Only the FAA is competent to issue such orders. Whistleblower legislation should leave absolutely no doubt that the Secretary of Labor is not authorized to issue such orders. We therefore suggest that the remedial provision of any such legislation should state that the reviewing official shall order the respondent "to cease violating this section." That revision would provide the reviewing official with the necessary authority, but no more than the necessary authority, to assure that a violation of one of the whistleblower protections is terminated.

Thank you for the opportunity to express to you our views about the whistleblower legislation.

Mr. MINETA. Our next panel consists of Mr. Miller from Flight Group, Inc.; Mr. David Pechan, a former pilot of West Air, Inc.; and Mr. Harlow Voorhees, Vice President of Operations, West Air, Inc.

Mr. Miller, please proceed in your own fashion?

TESTIMONY OF THOMAS O. MILLER, FLIGHT GROUP, INCORPORATED; AND DAVID I. PECHAN, FORMER PILOT, WEST AIR, INCORPORATED; AND HARLOW VOORHEES, VICE PRESIDENT OF OPERATIONS, WEST AIR, INC.

Mr. MILLER. Thank you, Mr. Chairman, for the opportunity to talk to your subcommittee today. Rather than go into a lengthy speech, somewhat similar to what Mr. Landry did, I would like to include what Mr. Landry's opening remarks were as reflective of my opinion of this legislation.

We wholeheartedly support it, but we support it with great reservations in that my company, Flight Group, Incorporated, is a victim of whistleblowers who—unjustly, I might add—went to the FAA or were asked by the FAA to submit testimony which the FAA had, after their testimony was submitted, proof that the actual testimony was in fact false or a personal violation of the regulations, totally against the company policies that we had instituted; that the employees themselves did so wilfully without being forced or coerced by the company or by the customers at hand; and in essence, the FAA took these whistleblowers' statements as statements of fact, totally disbelieving all evidence to the contrary, and used it in the form of an emergency revocation to put my company out of business entirely.

We had built the company over a three-year period from a small charter operation with four airplanes to a charter operation with 21 airplanes. During the investigation of our customer, who was the target of the FAA, we encountered two rather heavy base inspections by FAA officials, totally unannounced and one totally against FAA protocol in addition to that.

The base inspections uncovered absolutely nothing. The comments from the FAA officials involved in the base inspections were that they were rather surprised at the quality of our operation rather than any lack of quality of our operation. The second team was also asked the same questions by myself and by management officials of the facility where we based our airplanes, and nobody indicated that there was any problem, that they had found anything that was severely wrong or that there were severe maintenance or operational problems.

The FAA used the emergency revocation order against my company to get even with or to get at a customer of mine. This can be attested by statements from attorneys who were litigating with the FAA on behalf of my customer during the lawsuit of the FAA against my customer. In chambers the FAA official, namely, Loretta Alcolay, the Eastern Region Chief Counsel, made comments to my customer's attorneys that if she couldn't get them, she'd get their operators. Less than one month after their unsuccessful attempt to shut my customer down, they shut me down.

The main complaint in my situation was the contract that I had signed with the customer. I might add there were three other companies still in operation that signed that same contract that are still operating under that same contract; but because I provided 70 percent of the air service to the customer, my company was the choice.

The whistleblowers pointed out certain facts that have been proven to the FAA to be totally inaccurate, totally unfounded; and if they did happen, were strictly at the discretion of the employees involved. What I'd like to say very simply is that when whistleblowers' complaints are considered by the FAA, it should include an investigation of the complaint by going to the operator to check out the case, giving the operator the chance to correct or respond to the FAA as to why they couldn't correct the problem, and then the operator should not be penalized because of the whistleblower in the form of $10,000 minimum fines for each instance.

I state this simply because by doing this, you give the whistleblowers the capability to come forward without having the operators penalized heavily and in turn going back to the employee and saying, you cost us millions and millions of dollars or hundreds of thousands of dollars in fines because of your going forward. The legislation would not penalize the operator for a problem that was pointed out by the employee—or former employee in that case, the terminated employee—who did whistle-blow. This would give the operator less reason to terminate that employee, and a suitable arrangement could be made to stop the alleged violations.

As we are all aware, safety is the main concern of this situation. As we can see today, Eastern seems to be the main topic of conversation here. Eastern is—or may or may not be—a safe or unsafe operator. We don't know; that's to be determined by the FAA here over the next few weeks. What this legislation should begin toward are the employees of the unsafe operators, not only in the airline industry but also in the air charter, on-demand, or scheduled smaller operators of aircraft whose employees are not represented by unions, and where reprisals to an employee could be quick, swift, and the employee would have no recourse.

The safety record of some of the smaller operators leaves a lot to be desired, and something along the line of whistleblower legislation protecting the employees of those operators is important, is necessary. As has been said, the operators that are bad are the ones that cause regulation. But the regulations should not be used against the operators who are good when the employees come forward as a means of a labor dispute. The three employees that I terminated came forward to testify against my company; one of them had been on line for one day, and he was spouting policies and procedures that he wasn't even sure of himself. He was stating things that were happening that he wouldn't even know, that he couldn't have known, because he was not on line more than one day.

The other is an employee who was terminated for cause, who did not go to the FAA until after I turned her down to fill positions after her termination that had been vacated by management personnel within my company. The third was an employee whose performance had dropped off substantially to the point where he was unsafe, and we felt that it was in the best interests of the company to terminate the employee. I have proven this beyond the shadow of a doubt, and yet the FAA used those witnesses against me to terminate my operating license. This put my employees out of work, many of whom had to move out of the area they had been operating from because they could not find employment.

This was a gross miscarriage of justice on the part of the FAA, and any legislation that gives them the ability to use this legislation should also protect the operators from them and protect the operators from the FAA, also.

Mr. MINETA. Very well. Thank you very much, Mr. Miller.

Mr. David Pechan, a former pilot of West Air, Incorporated. Mr. Pechan?

Mr. PECHAN. Thank you very much, Mr. Chairman. I appreciate this opportunity to come here and testify. I'd like my full written testimony to be entered into the record.

Mr. MINETA. Without objection, so ordered.

Mr. PECHAN. I was an employee of West Air Airlines, operating as United Express out of Fresno, California. After I worked for them for about 10 months I wrote my first incident report to the company about safety of personnel on the ramp at San Francisco International after witnessing a ramp person nearly back up into a prop that was turning on an airplane. Just a few weeks later we had an airplane that, just after engine start, rolled forward and chewed up a battery cart.

On April 30, 1987, I was elected by my peers to the Pilot Professional Standards Committee on the airline. By May 9th I had become an outspoken critic of the operation of the air carrier, and I wrote a letter to the company owners and management with a copy to the FAA outlining the reasons for my concern. It was a 20-page letter, well documented, and included in that letter—I have included it in my testimony as Exhibit A—the cover letter, which clearly indicates that I had no intent to injure the company, and I did not go outside the company. It was sent confidential, through company mail marked confidential, only for the company management to open.

The letter outlined four main problems: the ground school weaknesses and testing improprieties; the training program was teaching illegal descent below decision height on instrument approaches in the fog; improper interpretation of the duty time regulation, it appeared to me; and the main problem, the company produced performance data for the EMB-110 was producing overweight takeoffs and landings.

About a year later, the following has been determined. The training program was in such a disarray that the FAA-approved training program which they did have, had expired on March 1, 1987, and the FAA issued a retroactive approval to the expired training program on June 16, 1987. Attached is a copy of the letter from the FAA obtained through the Freedom of Information Act.

The FAA ordered a complete rewrite of the training program, and it was in place at the company on July 1, 1987.

By the way, I attended the newly-developed training program on July 1st and received a 97 percent score.

On the issue of flight below decision height, on May 13, 1987, the company issued a memo to all pilots correcting the previously improper flight training of the crews. There has already been one deposition taken in the lawsuit I've filed against the company of another person in that class who fully substantiated the illegal training. There have been two tape recordings made, one of which is already part of the court record in my lawsuit, to confirm it, plus letters from the FAA confirming that the company taught the illegal activity, but the FAA states in two letters that it is not illegal for airlines to teach flight crews illegal activities; it is only illegal for the flight crew to do the act that they are thus taught.

The FAA found no violations in the technical sense of the duty time regulation. It was the same battle that the Eastern Captain discussed today; it was the same technical interpretation problem.

The FAA and the company confirmed that the performance data was inaccurate by late May of 1987, and immediately began a rewrite of the material. These documents are what were called "cheat sheets," and they were the old performance data that was used by flight crews. The company developed these. They started a rewrite while publicly denying that there was any problem with them. On August 19th, the company issued these after several months of work, and these are now in the cockpit of the airplanes.

Not only did the FAA demand the development of all of these charts—these were not actually available for crew use until early September because the FAA demanded complete classroom retraining of all flight crews on the EMB-110 in accordance with these procedures, which were all brought out by me in the course of letters addressed to the company and to the FAA in May and June.

On May 13, 1987, I had gotten assistance from the ALPA Engineering and Air Safety Department to verify that these were inaccurate charts. They advised me that I should no longer fly an airplane calculating takeoff weights and performance strictly on company data. I so informed the company, and on that day Mr. Harlow Voorhees, who is present here today, suspended me, advising me to turn in my company ID and to remain away from company property.

The company has claimed that it was a nondisciplinary suspension, although we are going to call witnesses to the fact that they attempted to stop my paycheck from arriving about a month later that was to pay me for the period of my suspension, which was two weeks.

Following threats of legal action on my behalf by ALPA, although we were a non-represented carrier, the company reinstated me. Many pilots in the company began to ask me if I would report, since I was already out front, additional problems. Included in letters of June 16th were improper checking of the engine power availability, improper treatment of engine failure on takeoff, company-demanded exclusive use of less than maximum power for takeoff even where it was not allowed by the flight manual, and improper use of rolling takeoffs from short runways where the runway was too short to use reduced power.

I have an analysis here of departures from Santa Rosa Airport that, if an engine failure would have occurred, we would have passed into the lower portion of eucalyptus trees that are 122 feet high off the end of the runway. This was an approved departure procedure by West Air's old performance data that would not be authorized by the new performance data now in the cockpits, that same departure, which was done consistently for the entire time I was with the company.

On June 19th I wrote another letter which included several items, but the most important was that the company improperly issued an operations directive to flight crews over the computer ordering them to ignore standard engine fire procedures. They told the crews to run the engines five minutes on an initial start if they got a fire light because they were having problems with the detection system, and I guess they were just supposed to look out the window and see if they had smoke to determine if they had a fire. This was later rescinded, as soon as the FAA received my letter. At an August inspection some crew members who followed the company procedure were threatened by the FAA with actions against their licenses for complying with the procedure because the company stated incorrectly that they had withdrawn it within 24 hours of issuance.

Today the company continues to operate the aircraft in a way—legally, in the eyes of the FAA—that if an engine failure should occur on takeoff, the aircraft cannot climb above obstacles in its path on departure. This is a serious safety problem that is compounded by the company's failure to recognize the performance limitation of the airplane. Even if there is adequate runway to potentially stop the airplane—this is recently demonstrated by a commuter flight crash at Raleigh-Durham Airport where the aircraft went half a mile and hit some trees without ever climbing.

This is still a continuing problem, even though experts around the Nation and West Air and ASA pilots agree that the airplane shouldn't be flown in a manner and in accordance with what the FAA has currently approved.

During all of this occurring, West Air management cranked out four letters to over 300 pilots explaining to them that there was no truth to any of my allegations, and they threatened me with termination if I did not stop telling the Captains I flew with why I was refusing to use this illegal performance data that the company was using in the cockpits. The FAA allowed the company to operate from May until September with illegal performance data that allowed takeoffs up to 2,000 pounds overweight for departures and landings because, in the words of Mr. Ed Hammonds, the FAA manager in charge, the company would not have been able to turn the aircraft in 15 minutes and meet the schedule if they had to run the appropriate performance charts in the flight manual.

The campaign by the company against me had become so great that several Captains had asked not to fly with me until the conflict was over. Agreement was reached with company management, Jim Schmidt in particular, that would not require me to fly with Captains who wanted out of the conflict, but the company reneged and asked me to fly with Mr. Ed Fletcher, who was a friend of mine but had a problem with the FAA at the time and did not want additional problems.

Captain Fletcher was informed that he was going to be required to fly with me in July of 1987, and the management asked him to "write him up, creating a scenario that would be grounds for his termination with cause" because I had a perfectly clean record with this company. Mr. Fletcher is prepared to give sworn testimony, his response to management, because he wasn't going to be their "hit man."

At the completion of that flight I submitted my resignation, giving two weeks' notice and the reasons, and four days later I was terminated. The reason for the termination is included in my testimony.

On July 27th and July 30th I submitted letters to the office of the FAA that outlined these, plus focused on the efforts of the company to force crews to carry too little fuel on board the aircraft. The company wanted to lower the fuel weight to the lowest possible levels so they could get more passengers on board. They collected data from flying the airplane over the routes, and they would log in on a sheet— the two people did—the amount of fuel burn from a fuel totalizer in the aircraft. It's a little thing like a trip meter in your car. The problem is that the airplane is built in Brazil, and jet fuel in Brazil is formulated to a different density than U.S. jet fuel. Contained in the flight manual is a conversion chart for the difference in density. The result was that their data off the top was six percent lower than it should have been.

Further, attached to my statement here, an internal document just recently received from inside West Air, from a Captain Cheryl LaFetra, who was involved in the development of the fuel sheets, to Jim Schmidt, and it was written in August to explain to Jim how the fuel sheets were calculated. It goes on to explain that if they had five trips over a particular leg, that they had kept track of the amount of fuel burned, then they would take the average of those and that would be the amount of fuel that they approved for the trip, and they would have 450 pounds for the reserve. As you can see in the attached memo, in the case of the Sacramento-Arcata run, it is representative of how this potentially could be abused. The average for the trips was 650 pounds, but on at least one occasion the trip required 1,200 pounds to reach its destination. Because 450 pounds did not equal the maximum fuel ever used on this trip, they allowed 1,200 pounds of fuel on this trip. This therefore proves that the company knew that on a past trip, the trip required 1,200 pounds, and they only allowed 1,200 on board, which meant that they knew that based on past history there would be no reserve on board the aircraft. It was a knowing, intentional act by the company.

The company denied ever punishing a crew member that carried extra fuel. Enclosed are statements from the unemployment compensation case of Captain Andre Cunningham who—one of the reasons he was not only terminated but that the company sought, and was successful in, keeping him from receiving unemployment compensation was that he consistently carried excess fuel—the question from the company attorney was, "Was the utilization of 200 to 300 pounds of fuel by Captain Cunningham something that he did every flight?" Answer: "Every time."

You might note that on September 3rd—the date of this deposition was October 26th, but on September 3rd the company had in their possession a letter from the FAA which I've obtained through the Freedom of Information Act; on the second page it says that "The charts are for planning purposes only and are not mandatory except for minimum fuel. With the turnover in pilots, memos such as this need to be reissued." If you note that entire letter—I met with the FAA on September 3rd, and if you look through the first page of the memorandums and operations bulletins, that was brought to their attention in June, in my June letter. The fuel was brought to their attention in June and July. The max pilot takeoff problem, item 3, was brought to their attention by me. The performance chart issue on the bottom was brought to their attention by me. The rewrite of the flight standards manual on the last page was required because of all the changes that were instituted as a result of my complaints.

The company obviously ignored the September 3rd FAA letter, since they used their corporate attorney and company pilots to testify against Andre Cunningham and to refuse him the opportunity even to draw unemployment. I might add that Andre had over 7,000 hours in this airplane.

I will submit to you that the system has rewarded failure in this case because the current management team of West Air/United Express is still in place and still not safety-oriented, but only profit-oriented. Had the company or the FAA done their job properly, none of this would ever have happened. There wouldn't have been anything to complain about, and by now I would probably be a First Officer on the BA-146 or a Captain on the EMB-120 based on my seniority number with the company.

So the bearer of the bad news has been killed, and it has not been by accident. I have been informed that—well, the company knew that I—Marty McDermott, the Chief Pilot, knew that I was going to apply at Wings West/American Eagle in California, and someone from company management called the Chief Pilot of American Eagle, told them not to hire me because I was a troublemaker, and the Chief Pilot—apparently in an effort just to remind himself to not let my résumé slip through the system—posted a note to himself on the bulletin board outside his office, and pilots at American Eagle saw the note posted.

Further, I made repeated requests to American Eagle to go to work for them, and a former Captain at West Air who flew with me considerably named Gil Merkle, who now flies with American Eagle, has recommended me repeatedly for interview but I have not been interviewed.

I have applied for 31 airline or aircraft-related jobs in the last nine months. I drove 800 miles for an interview with UPS, which was my only interview, and even though their personnel manager commented that he felt the company should be hiring people of my caliber, they have not even had the courtesy to acknowledge whether I have been rejected. That interview was February 8th.

I fully recognize that there is little likelihood of continuing my flying career. Blackballing is alive and well in the airline industry today.

I would like to read a paragraph or two here only because these portions I have read word for word, verbatim, to the people who I talked about, and they will stand behind the words in these two paragraphs.

I am not alone in being attacked by this company on safety-related problems. The airline continues to treat other employees in a similar manner. Mr. John Vaudrin, former station manager at San Francisco International, was fired April 1, 1988, for disclosing to United Airlines executives that he could not operate the ramp safely and efficiently with the number of employees the United Express management was limiting him to. This disclosure ended his job, but United officials did apply pressure to United Express and all the recommended personnel have been hired. Flight attendant Debbie Lott, who felt the only way to improve conditions on the airline was to unionize through the Association of Flight Attendants, was fired April 19, 1988. When 63 out of 65 United Express flight attendants submitted authorization act cards requesting a union election, West Air management began having mandatory anti-union meetings in violation of the Federal Railway Labor Act. Mrs. Lott was refused entry into a mandatory meeting and was threatened by company management in its efforts to remove her from the auditorium. A shouting match ensued. The next day she was ordered to a meeting at corporate headquarters. When she arrived with a union representative at her side the meeting was immediately canceled by the company. Later that day she received a telegraph suspending her, followed by her termination on April 19, 1988.

The pattern is clear. The FAA to date has been unwilling or incapable of correcting all the problems, although there has been substantial progress. I think the reason the airline industry isn't in worse shape than it is today is because individuals like Debbie Lott, John Vaudrin, and myself and other working people throughout aviation and Government are sacrificing everything to fight the plague that is destroying this industry. I submit that any industry that rewards incompetence and punishes competent, well-motivated professionalism is a sick industry.

On the issue that eventually will be brought up, that from the beginning I wanted to hurt the airline, I met with the company on May 12th, the top management of the company, to discuss my problems with the safety on the carrier. This was the day before I was suspended. This is a transcript from that hearing, which was recorded with permission. I stated at that time, after outlining the problems, that "I feel that because I am a pilot it is more than just a job, that I owe it to the people who ride on board that airplane as a professional that I am sure I am right, as close to sure as human beings can be when we take a flight out. I went under a lot of bad assumptions. We did a lot of things in view of what I've learned in this process that were not safe, and we were gambling with safety, so I think it is about time everybody sits down, quits fighting, and starts working on straightening this mess out." From the beginning, I attempted and wanted to work with management to help straighten it out. And this shows that it was easier to eliminate me than to deal with the problem.

On the legislation itself, I would appreciate it if the committee would consider that corporations do not do the acts that hurt airline employees; individuals do. Those individuals need to have a sanction, and I think the sanction needs to be adequate to make it so that they would not want to do the behavior that is against the law. I think that the only way to properly do that is that the individuals who work for the airlines in management who bring about these confrontations should be held individually responsible in some fashion. I think that it either ought to be a separate delineation that the management individuals that might be identified in the thing should at least carry a portion of that fine personally, or—I really support the idea that in the final analysis it should become a criminal act on the part of the management team.

That's all I have to say. Thank you.

Mr. MINETA. Mr. Voorhees?

Mr. VOORHEES. Thank you, Mr. Chairman and members of the committee, for allowing me to speak before your group today.

I would like my written testimony made part of the record, and I would like at this time to make a few brief remarks.

Mr. MINETA. Without objection, the full statement is included in the record.

Mr. VOORHEES. I am the Vice President of West Air, the airline that was being discussed here previously. The area that I oversee in the company is flight operations and maintenance. The management of my company supports legislation protecting the jobs of airline whistleblowers. We feel that a good company has nothing to worry about from such legislation and should welcome it. The existence of such legislation should be a reminder to middle-level managers in airlines who may try to intimidate employees that the employee could go to the FAA and make a documented complaint. I feel that it would be good for our industry.

I have a few concerns for the management side. In structuring such legislation, I pointed out in my written testimony that it should not override a company's authority to test a pilot and determine a pilot's competency to fly, so it should protect the pilot's or mechanic's job, but the company and/or the FAA should have the authority to allow that person to fly.

We feel very strongly that the complaints by employees that would be covered under legislative protection should be documented and should not be anonymous. I want to point out one reason that really came to light today, and that is that in the airline industry, pilots are certified. They have a responsibility as well as company management. The pilots who take off in an airplane knowing that it's unairworthy are also violating the regulations, just as the company who provides them with the unairworthy airplane. The mechanic who releases an airplane using the privileges of his AOP certificate when he knows that airplane is in an unairworthy condition, is in violation of the Federal Aviation Regulations.

Finally, with respect to the whistleblowing experience that my company has been through during the past year that Mr. Pechan was referring to, I did not come here to air our dispute with Dave. As Dave mentioned, there is some litigation, and that dispute will probably be settled in a court of law.

I would like to state for the record, however, that the FAA, our company's management personnel, a team of retired FAA officials who are now retired and have a consulting group, checked out Mr. Pechan's complaints very thoroughly. I would agree with Dave that there have been some good things at West Air that have come out of this process; I don't think that we would stand before this committee or anybody else and pretend that we know everything. Like anybody else, we have room for improvement. We have a very dedicated group of individuals in our company that do the best that they can to improve it.

I would also hasten to add that during this process there was not one violation of a Federal Aviation Regulation discovered. There were some changes, but there were no corrective action letters issued by the FAA that are of the type that occur when a violation of the regulations exists or suspected compromise of safety exists.

Again, with respect to Dave, I would like to enter for the record that—it does affect this whistleblowing issue—Dave was not fired from our company. He resigned on his own volition. I certainly did not blackball him. I hope that he's able to continue his career.

I would be happy to answer any questions that you may have.

Mr. **Mineta**. Very well. Thank you very much.

Mr. Voorhees, you suggest that the legislation should provide that penalties be imposed against employees who make false claims. Now, it seems to me after listening to all this today and in examining this issue, that there are two types of false claims. One, there is the frivolous, bad faith sort of claim, and two, there is the legitimate good faith but simply mistaken claim. I'm wondering, do you draw a distinction between these two when protections are being considered?

Mr. **Voorhees**. Yes, sir. I think that good faith claims that are found to be mistaken are worth checking out. I think that employees at the line level are probably the most able to see this, and they should be encouraged to bring forth these things. In penalties, I was referring to the kind of claims that are clearly not serious claims, the kind where you cry "wolf," that are just for the sake of causing the company a problem or detracting from the FAA's ability to do their job.

Mr. **Miller**. I'd like to comment on that, if I may.

Mr. **Mineta**. Sure.

Mr. **Miller**. What he's talking about, as I see it, is very simply that the employee may not interpret the regulation the same way that the FAA does. He goes to the FAA and says, "This is what I have found." That employee should not be penalized.

Mr. **Mineta**. What would you consider to be an appropriate penalty, then, for false claims, depending on the seriousness of the claim?

Mr. **Miller**. Possible suspension or revocation of rating. In the case of a substantiated claim, possibly termination.

Mr. **Mineta**. Mr. Pechan, it appears that you resigned from the company before you went to the FAA with your safety concerns. If there had been whistleblower protection in place, would you have gone to the FAA sooner?

Mr. **Pechan**. Yes, sir, I would have.

I would like to clarify that. I made my first complaints to the FAA on May 9th of 1987, and I remained on with the company through a suspension and returned to flight status. I did not resign until July 30th, under tremendous duress at the time.

I would just like to point out that the current way that these things function, my only recourse is through the civil courts in California, which I have filed a lawsuit. I might add that Debbie Lott will be filing one by the end of next week. That is a very slow, arduous, and expensive process at best. I am having to raise $25,000 just for the costs involved, which requires me to sell a rental house that I had, and it's going to take years because it's in the best interests of the company that this drags on as long as possible because inevitably I am convinced that it will be adjudicated in my favor. So the longer it drags out the longer the money is in their bank and not mine.

Mr. **Mineta**. Mr. Miller, could you provide us with some specifics of the identity of who the customer is that you describe in your testimony and why the customer who, I take it, was a freight forwarder, was suspected of violations by the Federal Aviation Administration?

Mr. **Miller**. The customer was Camelot Courier and Qualified Enterprises, Inc. They are two companies that are commonly owned. The majority of Camelot's business is the transport of canceled checks for the Federal Reserve Bank and for numerous banks throughout the northeastern United States.

The basis was the complaint was, again, a whistleblower in their organization that made claims that they were controlling aircraft when they weren't. A former employee who, I might add, is in competition with them and did not file his complaint with the FAA until after his company decided to operate—he has made comments to the effect that he's doing it because he wants to take over their business.

There were some problems with operators at Camelot. The FAA has come down swiftly and fairly on the operators involved. I was involved in one of the incidents myself. I was involved in leasing a few of the aircraft involved; and I will be honest with you, the FAA was correct in stating that the aircraft was unsafe to fly. So I wound up paying $6,000 for each of the aircraft for maintenance and repairs and items in that aircraft that should have been operating but weren't, items that were supposed to be with that aircraft but were not. The records were not with the airplane.

This legislation should deal with protecting those employees who come aboard the bad operators. The FAA should make every attempt to have the operator correct the problem or put that operator out of business. In my case, I want to state that I was not a bad operator.

Mr. **Mineta**. You suggest a process of formal notification of the operator, and that that should precede an investigation of a claim of a safety violation, and that the notification contain certain statements about the allegation and the rights of the operator. Then, as I understand it, you would go into an investigation, and a report would then be provided to an operator on corrective actions that are necessary, then a period of time for compliance.

That's fine for a normal situation. What would you do in the case of an emergency situation? It seems you——

Mr. **Miller**. In the case of an emergency situation, most of the time you're talking about an aircraft that is illegal to fly in the first place. You will notice in my amicus brief that I filed I also stated that that should not preclude the FAA from grounding any aircraft that is unsafe to fly. What I'm talking about is taking certificate actions against an operator for illegal operations. These have to be investigated. The operator has to have the opportunity to answer and, if possible, to correct the problem. In my case, I was never even informed that I was being investigated. I was informed that this was an investigation of my customer. I was cooperating with the FAA on that basis. I would have cooperated had it been an investigation of me; my reaction would not have been different. I would just have been a little more protective of some information which I released to the FAA, thinking that it was for the purpose of helping the FAA solve what they perceived to be a problem with my client, and not my company. They used information that I gave them—let's back up a second on that.

The information that I gave them was strictly on the basis that they were investigating the client. I was trying to prove that the customer, as they stated, was not operating aircraft, was not controlling the operations of the aircraft. On numerous occasions the FAA states that I told the customer, "The airplanes are yours; you operate them." That's not the case; quite the contrary. In a couple of cases the customer told me he wanted my pilots to do certain things; I said no. They said, "Fine. We'll take the contracts." And I told them they could take it and put their business where the sun don't shine.

Mr. **Mineta**. I don't want to hear that part of it.

Mr. **Voorhees**. Can I make a comment on your question, Mr. Chairman?

Mr. **Mineta**. Yes, sir.

Mr. **Voorhees**. With respect to an emergency situation, I don't think there should be any waiting period in the legislation. I feel anybody should be able to call the FAA in that type of a situation immediately. In the case of an airline employee, their job should be protected.

Mr. **Miller**. Agreed there, except one thing. You've got to look at the fact that it could be the simple operation of one airplane. Shutting down and closing an operator up because one airplane was operated improperly is not the way to go about solving a problem. In my case, my customers were contract companies that we flew for every day. There had been two base inspections within a two and a half week period. Within a month and a half of closing down my operation the FAA found nothing wrong and felt there was nothing wrong. The only comment—I sat down with the first investigating team and I said, what comments do you have? Did you find anything that I should correct? I was more than willing to cooperate with the FAA. It's on the record and off the record, and I can get statements to prove that it was said. The FAA said that they wanted my customer shut down at all costs, that they would do everything within their power, including shutting down the operators that deal with the customer to get that end to a means.

Mr. **Mineta**. Very well. Thank you very much.

Does anybody have any questions?

[No response.]

Mr. **Mineta**. If not, thank you very, very much for appearing before us.

Mr. **Voorhees**. Thank you.

[The prepared statements of Messrs. Miller, Pechan, and Voorhees follow:]

BEFORE THE HOUSE AVIATION SUBCOMMITTEE
HEARINGS ON "WHISTLE BLOWER" LEGISLATION
HOUSE BILLS HR-3812, 4023 AND 4113
APRIL 27, 1988

AMICUS BRIEF
IN SUPPORT OF HR-3812, 4023 AND 4113
WITH CERTAIN SAFEGUARDS INCLUDED

SUBMITTED BY:
THOMAS D. MILLER
#1149
3000 VALLEY FORGE CIRCLE
KING OF PRUSSIA, PA. 19406
215-783-7858

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Dear Mr Chairman, Committee Members and Concerned Citizens,

I would like to thank you for this opportunity to respond to House Bills HR-3812, 4023 AND 4113. I have not had the opportunity to read these bills as of yet, but since a company I own has fallen victim to statemants made by "whistle blowers" I feel compelled to share with you my views on how this legislation should be structured in order to be fair to all parties.

I am in support of this type legislation in that it will give the Federal Aviation Administration (FAA) the capability to use constructively, information supplied to them by employees of an Air Carrier (hereinafter referred to as Operator). However I must stress the use of this information "constructively". Information supplied to the FAA must be investigated properly and used to identify problems with Opperators for the purpose of mandating a correction of legitimate problems. This information must NOT be used, at least initially, as evidence to revoke an Operators Operating Certificate. All allegations must be investigated thoroughly and all Operators must be given the opportunity to correct the problems that are verified or uncovered. Any actions taken by the FAA against an Operator's certificate as a result of this type of an investigation MUST NOT be in the form of an Emergency Order of Revocation but rather in the form of a Request for an Order of Revocation if it is deemed a necesary solution. This method would give the Operator opportunity to explain, in an admininstrative hearing, why he has failed to correct the problems.

The FAA in investigating information obtained from Whistle Blowers must first look at the curcumstances under whih the information was supplied. Disgruntled former employees of an Operator must not be allowed to use these regulations as a forum for getting even with an employer who may have had a legitimate reason to terminate them. Whistle Blowers who use these regulations, when inacted, unjustly must be penalized for their wrongdoing. They must not be allowed to use these regulations as a forum for getting even with a former empolyer. Therefre clear cut guidelines must be set forth for the FAA to follow. Strict guidelines will aviod abuse of the power you will be giving to the FAA with the enactment of these regulations.

The following are some examples of what a typical investigation of allegations by whistle blowers must include.

1. Receipt of a complaint from an employee, former employee or someone familiar with the operations of the Operator.
2. Investigation of circumstances under which a former employee may have been terminated if he has been terminated by the Operator.
3. Formal notification to the Operator that he is being investigated for possible wrongdoing.

Notification should include but not be limited to the following:

- a. What allegations are being investigated and why.
- b. What possible course of action may be taken by the FAA.

c. What legal and administrative rights the Operator has in defense of the allegations.

4. Formal investigation of the allegations by the FAA.

5. FAA's report to the Operator on what corrective actions are necessary, if any, and in what period of time the operator must comply with the corrections dictated. This must not preclude the FAA from taking immediate action by grounding any individual aircraft it finds do not comply with the airworthiness standards of the Federal Aviation Regulations (FAR'S).

6. If the Operator complies with the FAA required changes within the time allotted only a warning should be issued to the operator stating that repeating the offenses will cause the implementation of stiff fines and cause possible action against their Operating Certificate.

7. If the Operator will not or does not comply with FAA required changes, with no justifiable reason for not doing so, the Operator should be subject to substantial fines as well as possible action against his Operating Certificate.

I can not overemphasize the importance of well defined guidelines for the FAA to follow concerning this type of legislation. The importance of this is highlighted in the incident that caused the downfall of a company that I own. The FAA began an investigation of one of my customers (in fact it was my primary customer) in September of 1987. The investigation was in response to information provided by a former employee (a "whistle blower") of my costomer. The investigation looked into the possibility that the customer had violated certain parts of the Federal Aviation Act, in that they were suspected of illegally operating aircraft for compensation or hire without possessing an Air Carrier Operating Certificate.

My customer is a well known and respected air freight forwarder operating throughout the northeastern United States. They primarily provide time critical transportation of cancelled checks for many large banks including the Federal Reserve Bank. They provide the ground transportation themselves and arrange for certified air operators to provide the air portions of their transportation services. This is similar to the type of program currently utilized by United Parcel Service (UPS) and Emery, just to name a few. During their investigation the FAA Eastern Region Acting Chief Council authorized the circumvention of many of the normal FAA investigative procedures and policies in an attempt to prove wrongdoing on the part of my customer. They repeatedly inspected the operations of all of the operators dealing with my customer in an attempt to find dirt. In their investigation three of my former pilots who were fired for cause (primarily poor performance) came forward to complain. My former chief pilot, his assistant, myself and other present and former employees of my company were questioned extensively about our policies and procedures and we were specifically asked about how certain situations that the former pilots had complained about were handled. In nearly all cases the testimony received from myself, my management team, current, and former employees differed from what the "whistle blowers" had claimed was the normal policy or procedure.

In spite of all the evidence to the contrary, the FAA filed suit against my customer in January of 1988 in an attempt to obtain an injunction to close down my customer. The FAA chose to use the statements of these "whistle blowers" as a statement of the facts not indicating at all that evidence obtained in the investigation did not support their allegations. In fact the evidence supported our claim that the "whistle blowers" had not been forced or coerced to operate illegally, but did so on their own inititative totally contrary to the FAR's and stated company policies and procedures.

The FAA, in their suit against my customer, failed to achieve the goal of the suit which was to close down completely the operations of my customer. In fact it did little to change the operations of my customer. In the negociations conducted in the judges chambers in connection with their suit, the FAA Acting Chief Council made the statement to my customer that if she did not succeed in closing them down directly she would start closing down their operators instead. Less than one month later (February 25, 1988) the FAA served me with an Emergency Order of Revocation stating almost verbatum the allegations contained in their unsuccessful suit against my customer. Additionally minor operational items the FAA was investigating that had been addressed and answered seperately but had not yet been closed out in the FAA records were used as additional grounds for the order. One item the FAA included was an incident involving two FAA Inspectors which clearly was a violation of the FAR's and possibly even criminal statutes. This action was clearly an attempt on the part of the FAA to impact heavily on my customer since my company was the main provider of service to the customer (nearly seventy percent of their total air transportation needs). The main contentions for the revovcation were the allegations that were made by the three "whistle blowers" and wording in a contract we had signed in February of 1987 with the customer. Again the FAA failed to mention the evidence they had that refuted almost all of the allegations. Additionally, no investigation was conducted into the wording that the FAA questioned in the contract. If they had they would have been informed of verbal agreements I had made with my customer clairified the areas they had questioned. The FAA had evidence in their posession since December of 1987 that these verbal agreements were in fact in place in the form of employee memos I had issued to my employees that covered the items in question.

Three things that clearly indicate how the FAA may attempt to abuse a loosely worded regulation governing the use of information obtained under the proposed "whistle blower" legislation is their handeling of the information in the cases I have cited. First, I feel that the at least one witness in my particular case was coercd by the FAA into giving false information. I say this becauese none of the witnesses ever discussed having conducted any illegal operations with either me or my management team. Second, the

FAA when they are conducting an investigation of an Operator are required by the U S Code (USC) and the Code of Federal Regulations (CFR) to notify the Operator in question that an investigation is being conducted and are to be given an opportunity to answer all allegations. The FAA did not inform me that my company was being investigated nor was I given the opportunity to respond to any of the unanswered allegations until after my Operating Certificate ha been revoked. I was led to believe that I was only cooperating in the FAA's investigaton of my customer. This is clearly a violation by the FAA of the rights granted me by the U S Constitution. Third, four companies signed the contract that the FAA used as a reason to close me down. Since none of these other Operators were providing a major amount of our customers air service requirements they are still in operation. When I questioned the FAA Acting Chief Coucil at my NTSB hearing as to why they had not been shut down also I was given the excuse that the FAA did not have enough inspectors to conduct inspections of these Operators. This in itself is an out and out lie as I know from discussions with these operatisors that they were undergoing the same number and kind of inspections I was incurring during the FAA's investigation of our client.

I am including in the Appendicies of this document information concerning the above cases. I am in possession of more information concerning my particular case and I would be happy to provide any additional information you may request as it becomes available to me. I am including the following documents, some of whch are from a suit I had filed against the FAA in a Newark, New Jersey, U S District Court. My suit against the FAA was dropped due to an agreement I was coerced to accept at the emergency National Transportation Safety Board (NTSB) hearing on my case because of my inability to finance a proper defense of the allegations contained in the Emergency Order of Revocation of my companies Operating Certificate.

1. Restraining Order issued against my customer issued by a Newark District Judge.
2. "Whistle Blower" affidavits.
3. Emergency Order of Revocation
4. My lawsuit against the FAA and my answers to their allegations.
5. FAA's brief in answer to my lawsuit.

Thank you for this opportunity to present my feelings on this proposed legislation. I do agree it is necessary to protect the employee when he comes forward to testify against an Operator but I emplore you to also consider the protection of the Operator also. A disgruntled employee who may be exagerating the truth in order to get even for being terminated should be punished for attempting to use this forum unjustly. After all the main idea behind this legislation is to protect the flying public and make our skies safer to fly. Carefully worded legislation can help the FAA weed out the bad Operators without causing casualties amoung the good Operators.

APPENDIX I

United States District Court
District of New Jersey

UNITED STATES OF AMERICA, Plaintiff,	:	Civil Action No. 88-480
v.	:	
QUALIFIED ENTERPRISES, INC.; CAMELOT COURIER, LTD.; EUGENE WITTKE; DEBORAH MORRIS; JOHN McGRENAGHAN; AND BONNIE McGRENAGHAN, Defendants.	:	ORDER

Upon application of the United States of America on behalf of the Secretary of Transportation and the Federal Aviation Administration, with prior, informal notice to defendants and their counsel; and the Court having considered the summons, complaint, memorandum of law and declarations of Thomas P. Accardi, Andrew Campanaro, Brenda Silva, Gabriel Quiros, Lawrence Silver, and R.M. Maytan and the attached exhibits in support thereof; and the Court having weighed the oral arguments of counsel for both plaintiff and defendants stated in open court on January 26, 1988; and the Court having determined that the plaintiff has demonstrated a reasonable likelihood of success on the merits of this action; and the Court having determined that irreparable injury to the public may well result unless defendants are immediately and temporarily restrained from engaging in any of the acts set forth in paragraph II below, and that the public interest warrants the imposition of such temporary restraints; and for good cause shown;

It is on this 27th day of January, 1988, ORDERED:

I. That defendants shall appear before this Court on the 1st day of February, 1988 at 2:00 P.M. or as soon thereafter as counsel can be heard, before the Honorable John W. Bissell, in the United States District Court, U.S. Post Office and Courthouse, Newark, New Jersey, and show cause why this Court should not enter an Order, pending final determination of this action, restraining, prohibiting and enjoining defendants, their officers, agents, servants, employees, assigns, successors and attorneys, and those persons in active concert or participation with them from: (1) violating sections 610(a)(4) and (5) of the Federal Aviation Act, 49 U.S.C. "" 1430(a)(4) and (5); (2) any involvement in the direct or indirect carriage of property by air, including but not limited to (a) operating or causing or authorizing the operation, scheduling, loading, direction and/or routing of any aircraft in air commerce; (b) directing, controlling, managing, or performing (and assisting, counseling and aiding such) any of the operations of any Part 135, Part 121 or Part 125 certificate holder; (3) falsely advertising, representing or holding out to the public, the government or any third party that defendants perform air transport services or comply with FAA requirements for air transport services.

II. That, until 5:00 P.M. on February 1, 1988 or further Order of this Court, defendants, their officers, agents, servants, employees, assigns, successors and attorneys and those persons in active concert or participation with them, are hereby restrained from performing or undertaking any of the activities listed in subparagraphs (1) through (3) of paragraph I above, with the exception that defendants and said other persons, confining their actions to the legitimate, lawful activities of a freight forwarder, and without acting in violation of the Federal Aviation Act or regulations enacted pursuant thereto, and/or without in any way directing, controlling, influencing or criticizing decisions made by any Part 135, Part 121 or Part 125 certificate holder or any pilot thereof, may deliver or cause to be delivered to any such certificate holder property for carriage by air in non-overweight shipments, properly loaded in airworthy aircraft, to be transported only in weather conditions and other circumstances conducive to the safe flight of said aircraft and its cargo.

III. That any responding papers be filed with the Court and served by overnight mail or by hand on plaintiff at the office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, New Jersey, on or before 10:00 A.M. on the 1st day of February, 1988. And it is

FURTHER ORDERED that this Order to Show Cause, the Summons and Complaint, Memorandum of Law and Affidavits filed herein be served not later than 5:00 P.M. on January 27, 1988, by hand delivery or overnight mail to defendants and their attorneys.

The honorable JOHN W. BISSELL
United States District Judge

Action?

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Posted: Wed  Jan 27, 1988   4:27 PM EST              Msg: KGII-2856-6670
From:   AEA210
To:     AEA.FSDOS
Subj:   COURT ORDER
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PLEASE RESPOND TO THE PREVIOUS MESSAGE (COURT ORDER) ONLY IF IT APPLIES TO YOUR CARRIERS AS STATED.

Action?

Posted: Wed Jan 27, 1988 4:23 PM EST Msg: KGII-2856-6628
From: AEA210
To: DPA (RECEIPT), DTW (REC), OKC (REC), FLL (REC), AGL200 (REC), ASO200 (REC), ASW200 (REC), ANE200 (REC), AEA.FSDOS (REC)
Subj: COURT ORDER

1. This is to certify that on 27 January, 1988, I received the attached Order of the United States District Court, District of New Jersey, Civil Action No. 88-480, captioned United States of America v. Qualified Enterprises Inc.; Camelot Courier Ltd.; Eugene Wittke; Deborah Morris; John McGrenaghan; and Bonnie McGrenaghan.

Thomas O. Miller
Signature

Witness

Inspector

---

2. This is to certify that on 27 January, 1988, I hand delivered the attached Order of the United States District Court, District of New Jersey, Civil Action No. 88-480, captioned United States of America v. Qualified Enterprises, Inc.; Camelot Courier Ltd.; Eugene Wittke; Deborah Morris; John McGrenaghan; and Bonnie McGrenaghan to MR. THOMAS O. MILLER

Inspector

APPENDIX II

AFFIDAVIT OF GABRIEL QUIROS

GABRIEL QUIROS, being duly sworn, deposes and states under penalty of perjury that the following is true:

1. I am a pilot who was employed by Flight Group, Inc. for approximately ten months until January 9, 1988.

2. On January 8, 1988, I arrived at Teterboro Airport, Teterboro, New Jersey at approximately 10:30 p.m. for an 11:30 p.m. departure to fly a Flight Group Piper Navajo aircraft to Boston Massachusetts carrying freight for Camelot Couriers, Ltd. and/or Qualified Enterprises, Inc. (hereinafter Camelot/ Qualified).

3. I received a weather briefing. The flight service station was for SIGMET 9, meaning moderate to severe icing conditions below 15,000 feet to surface level, especially for the Massachusettes area, including Providence. At that time I was informed that all the runways at Logan Airport in Boston were closed due to snow. I immediately INFORMED Camelot that the weather conditions were too severe and that I would not fly in such conditions. However, I did wait at Teterboro airport until 2:30 a.m. for the weather to improve. At that time, I got an updated weather briefing from the flight service station. The weatherman at Teterboro was reporting the same weather conditions as earlier with no improvements. Although Logan airport had cleared runway 4 left and 22 right, due to the wind direction, 320 at 20 knots and the conditions of the runway, which was cleared of snow, but stil icy, I decided that the overall improvements were not enough for a safe flight for landing aat Boston Logan Internationl airport.

4. I informed a Camelot/ Qualified supervisor known to me as "Rick" that I would not fly the aircraft under those weather conditions. He told me that the freight had to get to Boston.

5. After checking the weather reports again, I determined that the weather conditions were unsafe for flight and I went home.

6. At approximately 3 a.m., I was called at my home by Thomas Miller, President and Director of Operations for Flight Group, Inc..

7. He indicated to me that he had spoken with someone from Camelot/Qualified regarding the flight I had been scheduled ~~txxtaixxtp~~ to take to Boston.

8. I explained to him that I did not fly the flight because of the weather conditions. I told him if he wanted me to fly, that I would have to check the weather reports to see if the weather had improved. After checking, I found the weather to be unacceptab

9. Mr. Miller told me that I had a choice to either fly the flight to Boston or I would be fired.

10. I told Mr. Miller that I would have to be fired. His response was to hang up the telephone.

Dated: 1/29/88

Gabriel Quiros

0768d

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, : Hon.

Plaintiffs, : Civil Action No.

v. : DECLARATION OF ANDREW CAMPANARO

QUALIFIED ENTERPRISES Inc., CAMELOTCOURIERS, LTD, EUGENE WITTKE,DEBORAH MORRIS, JOHN McGRENAGHAN,and BONNIE McGRENAGHAN :

Defendants.

ANDREW CAMPANARO hereby declares under penalty of perjury.

1. Currently, I am the President of Ryans Courier Express Ltd which drives freight and cargo in New York. I have been in the freight forwarding industry since 1978 when I began as courier driver for Loomis Courier. When Loomis was purchased by Gelco in mid-1979, I became a branch manager responsible for courier service out of Rochester. In 1981, John McGrenaghan hired me to be responsible for all air and ground transportation from Albany to Rochester for Hudson Armored Car and Courier. In 1983, we left Hudson to form Camelot. Between March 7, 1983 and February 1, 1987, I was associated with Camelot Courier ("Camelot"). The company was formed in 1983 with John and Bonnie McGrenaghan having a 65% ownership interest and Steve Archer, Pat Miller and Ed Burns and I each sharing the remaining interest.

2. In January 1986, John McGrenaghan indicated that he wanted to bring Eugene Wittke into the company. Steve, Pat and I vetoed the idea because we were familiar with Mr. Wittke. As a past customer, we had known Mr. Wittke to load cargo on flights above the maximum permitted weight limitation.

3. Rather than bring Wittke directly into Camelot, Qualified ("Qualified") Enterprises was started. The Wittke family and McGrenaghan family shared the ownership of Qualified.

4. In 1986, my position with Camelot was Senior Vice President Operations. I was responsible for setting up operations and overseeing the managers who implemented operational procedures. Camelot operated approximately twenty-two flights each night. Although all of the flights were subcontracted to Part 135 air carriers, Camelot and Qualified controlled the air carriers. The contracts and bid solicitations required the air carriers to give Camelot and Qualified operational control. Some of the companies we hired included Buffalo Express Airlines and Flight Charter.

5. Camelot dictated the time flights would be flown and their destinations. Wittke had authority to and did change routes and would merely call the control tower or flight services and direct the plane to another airport. Pilots were told to make the change but we rarely contacted the air carrier owners to clear the

change with them. If we did contact the carrier and they objected to the change, we told them that if they couldn't do what we needed that we couldn't use their services. The air carrier companies were generally owed so much money by us that it was in their interest to do what they were told so that they could continue to get Camelot and Qualified business. At one point Buffalo Express was owed about $150,000 by Camelot and Qualified and payments were spread out to them over a long period of time.

6. Wittke and I had almost daily operational disputes. He would do things such as agree to carry 900 pounds of freight for a customer, but fail to tell the operations department of the order. The pilot would arrive and he would be unable to carry that much weight. Wittke would talk to the pilot and insist that the excess weight be carried.

7. Often, there were two sets of load manifests on Qualified flights, one from the customer and one from Qualified. Qualified's weight bills were often understated to be sure that the overload would be carried. Since the Qualified documents are the ones the pilots received. The pilots often got inaccurate weight information.

8. Camelot's business was that of door-to-door courier for banks to get their cancelled checks to a location to be processed. We would pick up the checks by ground transportation at night from many banks in the northeast. The checks would be

transferred to planes, which would fly to a central "hub" in either Teterboro, N.J., Utica, N.Y. or Buffalo, N.Y. The checks would be then transferred to a plane that was flying to the final destination of the checks. This process occurred at least twice each night at each of the "hubs".

9. Technically, I was in charge of this operation but, in reality it was Wittke with John McGrenaghan's consent who on most occassions controlled it. Lawrence Schertel had been my assistant and when I left the job, he replaced me.

10. I observed Wittke insisting that pilots fly in bad weather. I saw him do it with John Hugle and Tom Cunningham.

Hugle was Chief Pilot for Wittke at Air Central and was 29 years old. One night during bad weather, a pilot called in to say that he would not fly a particular route to Buffalo. Wittke, who made all operational decisions for Air Central, had Hugle (who had worked in the office for the entire day) fly the route into Buffalo in a plane that was not equipped for the weather. Regulations require planes flying into areas known for icing to be equipped with "boots". Boots are used on certain sections of the plane and by expanding and contracting they break the ice and cause it to fall off the plane. Hugle's plane did not have boots and when he flew into Buffalo the plane crashed and he died.

I am also aware that Ben Goodman, a pilot, died in a plane crash while in Wittke's employ. Another pilot Tom Cunningham, was a very young and inexperienced pilot for Buffalo Express Airlines. One night, the weather in Teterboro was so bad that all planes were grounded. However, Wittke called Cunningham at Hartford Airport and had him fly into Teterboro.

11. Landing fees, which are normally paid for by the air carrier, were paid for by Wittke at Bridgeport and Hartford airports. He did this because he had represented to the customers there that it was his air force and not that of a subcontractor that was flying their freight. The customer was never told who was really flying their freight. There were two banks in Connecticut, Connecticut Bank and Trust and Connecticut National who were customers. Connecticut Bank and Trust did not want to do any business with Camelot and believed that Qualified had its own airforce. Connecticut National did not want to do business with Qualified. Neither bank was told that their checks were carried right next to each other on the same flights and they were never told that Camelot and Qualified were totally interrelated companies.

12. Wittke often put pressure on pilots to fly over weight often by threatening to have them fired. One night at Teterboro, Gary Summerton was given a manifest stating that there was 800 pounds of freight on board his flight. However, Gary knew from the weight of the individual bundles that the weight was approximately 1,200 pound. Gary refused to fly with more than 800 pounds and I gave him permission to limit his weight to 800 pounds. The next day Wittke called Summerton's boss to complain about him.

Wittke's reputation in the industry was for overloading planes and doing anything necessary to get the job done without regard for anyone.

13. Neither Camelot nor Qualified had any operations manual, operations specifications or pilot training and testing programs.

14. In my experience, the planes used to carry cargo for Qualified and Camelot were not properly maintained. At one point Camelot bought a company called Interstate, which was owned equally by John McGrenaghan and myself. Wittke assumed responsibility for maintenance and he always tried to cut corners, which imperiled safety.

Andrew Campanaro

0768d

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	: Hon.
Plaintiffs,	: Civil Action No.
v.	: DECLARATION OF LAWRENCE SILVER
QUALIFIED ENTERPRISES INC, CAMELOT COURIERS, LTD, EUGENE WITTKE, DEBORAH MORRIS, JOHN McGRENAHAN, and BONNIE McGRENAHAN	:
Defendants.	:

LAWRENCE SILVER hereby declares under penalty of perjury:

1. I am a flight instructor and pilot having flown in commercial aviation since 1981. I have flown approximately 2200 hours. Currently, I am self employed as a flight instructor.

2. Between November 3, 1987 and November 25, 1987, I worked for Flight Group, a certified Part 135 air carrier. In this capacity I was assigned to fly routes for Camelot Courier and or Qualified Enterprises (hereinafter Camelot/Qualified) out of Teterboro airport in New Jersey.

3. During training at Flight Group, I was instructed by Cathy Rodziewicz that Camelot was known to have unsafe freight loading procedures and that they were known to have left cargo doors on planes open. In training I was also told that Qualified /Camelot often tried to load extra weight on the to plane and even put cargo on the co-pilots seat. I was instructed to double check everything done by them.

4. In previous jobs when I flew routes to transport cargo for freight forwarders, it was the dispatchers of the Part 135 companies who controlled the flights. When flying for Camelot/Qualified, it was clear that they exercised operational control over the flights of the Part 135 certificate holders.

5. I was required to call Camelot/Qualified while inflight on their frequency ten minutes after my flight took off and ten minutes before expected landing. If any problems developed in flight, my flight was rerouted in mid flight by Camelot/Qualified personnel.

6. I was required to call Camelot/Qualified with regard to any problems and not my employer, Flight Group. In fact, had I wanted to discuss problems or rerouting with Flight Group I could not do so because Flight Group was closed after 11:00 p.m. when most of the Camelot and Qualified flights ran. In training, I was given both an 800 number for Camelot/Qualified and a ground frequency number. I was also given a Flight Group telephone number but was told by Tom Miller, the owner of Flight Group, to call Camelot and not Flight Group. I was told to ask for Rick, Matt or Larry at Camelot.

7. I was instructed by both Tom Miller and several Camelot/Qualified employees, one of whom identified himself as an owner, that when I arrived at Bridgeport airport I was not to say that I was on a Flight Group flight. I was always to call it a Qualified flight. If I didn't call it a Qualified flight, cargo wouldn't be released to me in Bridgeport.

8. On the night of November 23, 1987, I arrived at Teterboro airport at approximately 8:00 p.m. Four or five Camelot/Qualified workers were loading my plane. Cargo was put everywhere, without any concern for safety regulations. Newspapers were being placed behind the pilot's seat and they were being stacked vertically from wall to wall. No restraining devices were being used to assure that the newspapers would not shift in mid-flight. I was concerned because the load behind the operator's seat could have shifted, which would have been very dangerous and potentially destabilizing to the aircraft while in flight. Instead of being given the required load manifests with the actual weight of the cargo I was carrying, I was quickly shown a clipboard holding a piece of paper with handwritten numbers on it. I was told that the plane was carrying its usual weight. I indicated this was unacceptable and that I wanted invoices, bills of lading and actual weight so I could do my weights and balances as necessary before take off.

9. I went to the airplane and discovered that the freight bundles did not have their weight indicated on them. However I found three invoices on a seat. I was told that another invoice was under the baggage and could not be retrieved. The three invoices stated that they included 417 lbs, 300 lbs and 93 lbs. These weights were about 200 pounds over what I was told was onboard. I could also tell by the approximate weight of each bundle that the weight shown to me on the clipboard was

inaccurate. I was also told that another 200 pounds had been loaded into the nose of the plane. Normally, this much weight would not have been a problem. However, I also had to consider the fuel in the plane which was weighty because the tank was almost full I calculated the total weight as being: 3,700 pounds for the empty plane, approximately 1,000 lbs of freight and approximately 900 lbs of fuel for a total of 5,600 lbs. The plane I was to fly was a Cessna 310 with a maximum gross weight of 5,500 lbs. I stated that I wanted weight removed from the plane because it was dangerous to fly that heavy. Someone came up to me who said he had been flying for 21 years and he said "who do you think you are talking to buddy? I am one of the owners." He said the plane was not overgross weight and threatened that if I didn't get on the plane that I would have problems. He removed two bags of cargo weighing approximately 50 lbs each from the plane and then replaced one. I then realized that I had forgotten to add in my own weight of 180 lbs, which would make the plane approximately 280 lbs over gross take off weight. I reiterated that I would not fly unless the plane was balanced and the owner continued to intimidate me. He called me a "smart ass".

10. Another Flight Group pilot who had been listening told me I would be wise not to aggravate the people from Qualified and Camelot. I attempted to reach someone from Flight Group but I couldn't contact anyone. In the end, I refused to fly the flight and instead that night I flew a flight to Boston and back to Teterboro.

11. On the night of November 25, 1987, Tom Miller, the owner of Flight Group, told me that "he had to let me go because of what happened at Camelot." Tom Miller stated that Camelot had called him and stated that they didn't want me flying for them. They told Tom Miller that the plane was not overweight and it was all my fault. I was dismissed and I never flew again for Flight Group. I have heard that other experienced pilots have been dismissed by Flight Group as a result of pressure from Camelot/Qualified.

12. In the many cargo flights that I have flown for other companies, each bag with freight had its weight marked on it. That is necessary so you can determine where the center of gravity of the plane is located and accurately determine your weight. The center of gravity and the amount of weight is crucial on any plane but especially so on a small plane like the Cessna 310 used for the flight on the night of November 23, 1987.

13. Among cargo pilots, it is reputed to be the standard operational procedure of Camelot/Qualified to try to have planes fly over gross maximum weight, to have offered money to pilots to induce them to fly overweight and even to put cargo on the passenger seat blocking the exit door of the aircraft.

Lawrence Silver

0768d

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	: Hon.
Plaintiffs,	: Civil Action No.
v.	: DECLARATION OF BRENDA SILVA
QUALIFIED ENTERPRISES INC, CAMELOTCOURIERS, LTD, EUGENE WITTKE,DEBORAH MCRRIS, JOHN McGRENAHAN, and BONNIE McGRENAHAN	:
Defendants.	:

BRENDA SILVA hereby declares under penalty of perjury.

1. I am currently a pilot for Ronson Aviation in Mercer County, Trenton Airport. I have held this position since November 1987. I have been a pilot since approximately 1980 and have flown approximately 4,400 hours.

2. Between October 1986 and September 1987, I worked for Flight Group, a Part 135 air carrier. During my employment at Flight Group, I was assigned to flights for Camelot Courier and Qualified Enterprises (hereinafter "Camelot/Qualified") out of Teterboro airport. I resigned from Flight Group because of the dangerous conditions under which I was forced to work on these routes and the threats and intimidations made by Camelot/Qualified.

3. I flew approximately five days a week for ten months on Camelot/Qualified flights throughout the northeast. The merchandise I carried was newspapers, U.S. mail, banking documents and intercompany documents.

4. Camelot and Qualified often attempted to have me fly over the lawfully permitted gross weight. This occurred sometimes without my knowledge in that more weight was put on the plane than was indicated on the waybill they provided to me. On other occasions, Camelot/Qualified would attempt to intimidate pilots and threaten to have them fired if the pilots did not fly "over safe weight".

5. On one particular night, I co-piloted a flight for Camelot/Qualified in which the pilot and I told Camelot/Qualiffied that we could only take between 800 and 850 lbs. We were presented with a waybill indicating that 1100 lbs were on board. However, when the cargo was weighed, we determined that it contained approximately 1400 lbs. The plane eventually took off with approximately 1200 to 1300 lbs.

6. On another occasion I was told by Camelot/Qualified that my freight weighed 900 lbs which was the maximum the plane could hold. However, when I landed, I determined that Camelot/Qualified had placed an additional 400 lbs on board making me over the lawfully permitted gross weight by approximately 400 lbs.

7. For awhile I and other pilots brought scales provided by Flight Group because Camelot/Qualified could not be relied upon to accurately state the weight of the freight they were shipping. For a short time, thereafter, the weights indicated by Camelot/Qualified were close to the actual weights of the freight. However, within a few weeks you could tell from the way

the planes handled that the actual weights were several hundred pounds above what was stated by Camelot/Qualified in their way bills. I would estimate that the load manifest provided by Camelot/Qualified was overweight approximately 30-40% of the time.

8. Camelot/Qualified often loaded freight onto the planes without any concern for safety regulations. The freight was sometimes unsecured and put anywhere an empty space could be found. On occasion I was requested to put cargo on the co-pilot's seat unrestrained. This created a danger because the freight could shift during flight.

9. Because of the inaccurate weights given and the way the freight was loaded on the plane, it was often impossible to perform the necessary pre-flight task of determining weights and balances. Without doing this you flew with a greatly decreased ability to control the ~~engine~~ airplane BOK and it could cause disasterous results if one of the plane's engines failed. The performance of the A/c on one engine if the A/c is out of balance and or overgross

10. Neither Camelot nor Qualified provided any testing or training of the pilots who flew routes on their behalf.

11. On one night Camelot/Qualified did not permit me to use the bathroom because it might delay a flight.

12. I was told by Flight Group's, Tom Miller that when I was on a Qualified/Camelot route, that Camelot/Qualified made all decisions concerning the flight. Tom Miller, owner of Flight Group was threatened with being fired by Camelot/Qualified if their operating requests were not honored. In my opinion Camelot/Qualified rather than Flight Group exercised operational control over flights flown for them.

13. The reputation of the management of Camelot/Qualified among pilots is that the companies had no respect for the pilots or concern for their safety, and cared only about their own business.

14. It is my opinion that the continued operation of Camelot /Qualified threatens the safety of the pilots who fly their routes and generally endangers air traffic. In my experience, serious safety violations are an every day occurrence in their operation.

Brenda Silva

APPENDIX III

U.S. Department
of Transportation
**Federal Aviation
Administration**

Eastern Region

Fitzgerald Federal Building
John F. Kennedy
International Airport
Jamaica, New York 11430

[illegible] 1988

(718) 917-1035

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Flight Group, Inc.
d/b/a/ Flight Charter
Pottstown-Limerick Airport
R.D. No. 3
Pottstown, Pennsylvania 19464

Docket No. 88EA050010

EMERGENCY ORDER OF REVOCATION

TAKE NOTICE, that upon consideration of all the evidence available, it appears to the Administrator of the Federal Aviation Administration that Flight Group, Inc., the holder of Air Carrier Operating Certificate No. 3-EA-169, issued pursuant to Part 135 of the Federal Aviation Regulations, no longer meets the requirements for holding such certificate by reason of the following circumstances:

1. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and on or about January 27, 1988, Flight Group, Inc. failed to maintain operational control of its air carrier flight operations. Specifically, Flight Group, Inc. permitted Camelot Couriers, Ltd. and/or Qualified Enterprises, Inc. to:

   a) direct and/or redirect its flights.

   b) direct the termination and/or reassignement of its employees.

c) direct the loading of its aircraft.

d) intimidate, force or coerce its pilots into operating flights in which the aircraft were not properly loaded, or when the aircraft were not in an airworthy condition or when the weather conditions were not safe for flight.

e) otherwise direct, dictate or control the operations of Flight Group, Inc.

2. Neither Camelot Couriers, Ltd. nor Qualified Enterprises, Inc., presently hold, nor did they at any time relevant herein hold, an Air Carrier Operating Certificate issued by the Federal Aviation Administration.

3. Between on or about February 28, 1987 and January 27, 1988, Flight Group, Inc. failed to list Camelot Couriers, Inc. and/or Qualified Enterprises, Inc., or any of their employees, in the list of:

a) management personnel in its company manual.

b) personnel authorized to exercise operational control in its company manual.

4. On or about November 23, 1987, Flight Group, Inc. fired Mr. Lawrence Silver, one of its pilots, for failure to accede to the demands of Camelot Couriers, Inc. and/or Qualified Enterprises, Inc. to fly a Cessna 310 aircraft when it was not properly loaded.

5. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and January 27, 1988, Flight Group, Inc. failed to prepare accurate and/or complete load manifests.

6. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and on or about January 27, 1988, Flight Group, Inc. intimidated, forced or coerced its pilots to operate aircraft when the weather conditions were not safe for flight; operate aircraft which were not in an airworthy condition; and to operate aircraft which were not properly loaded.

7. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and Januray 27, 1988, Flight Group, Inc. in fact operated aircraft which were not in an airworthy condition.

8. On or about January 7, 1988, Flight Group, Inc. fired Mr. Gabriel Quiros, one of its pilots, for refusing to operate a flight in unsafe weather conditions.

9. On or about January 11, 1988, Flight Group, Inc. operated a Piper PA-31 aircraft, registration no. N3525B, from Philadelphia, PA to Teterboro, N.J. under Part 135 of the Federal Aviation Regulations, without using pertinent aeronautical charts.

10. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and January 27, 1988, Flight Group, Inc. permitted its aircraft to be loaded without the supervision of the pilots operating those aircraft. The Flight Group, Inc. company manual requires that its pilots supervise the loading of their aircraft.

11. As a matter of policy and practice and on numerous occasions between on or about February 28, 1987 and January 27, 1988, Flight Group, Inc. required flight crewmembers to make radio transmissions which were not required for the safe operation of the flight during critical phases of flight.

12. On or about January 11, 1988, Flight Group, Inc. operated a Piper PA-31 aircraft, registration no. N3525B, at Teterboro, N.J. under Part 135 of the Federal Aviation Regulations, and allowed N3525B to be refueled without being properly grounded. The Flight Group, Inc. operations manual requires the pilot-in-command to ensure that each aircraft is properly grounded while being refueled.

13. On or about September 29, 1987, Flight Group, Inc. operated a Cessna 310 aircraft, registration no. N77FA, under Part 135 of the Federal Aviation Regulations at Teterboro, N.J. when it failed to have the following documents on board:

a) an approved Airplane Flight Manual.

b) one-engine-inoperative climb performance data.

c) an emergency cockpit checklist containing the procedures required by Section 135.83(c) of the Federal Aviation Regulations.

14. On or about January 28, 1988, Flight Group, Inc. operated a Piper PA-31 aircraft, registration no. N3525B, from Philadelphia, PA to Teterboro, N.J. under Part 135 of the Federal Aviation Regulations, without having the cargo on board properly secured.

15. Flight Group, Inc. failed to have enough qualified management personnel in the positions listed in Section 135.37(a) of the Federal Aviation Regulations to ensure safety in its operations.

By reason of the allegations specified above, Flight Group, Inc. violated the following Sections of the Federal Aviation Regulations:

1. Section 91.29(a), which states that no person may operate a civil aircraft unless it is in an airworthy condition.

2. Section 91.31(b)(1), which states that no person may operate a U.S. registered civil aircraft for which an Airplane or Rotorcraft Flight Manual is required by Section 21.5 unless there is available in the aircraft a current approved Airplane or Rotorcraft Flight Manual or the manual provided for in Section 121.141(b).

3. Section 135.3(a), which states that each person operating an aircraft in operations under this part shall, while operating inside the United States, comply with the applicable rules of this chapter.

4. Section 135.5, which states in pertinent part that no person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate and appropriate operations specifications issued under this part.

5. Section 135.21, in that Flight Group, Inc. failed to ensure that its flight personnel used the company manual in conducting their operations under this part.

6. Section 135.23(a), which provides in pertinent part that the company manual must include the name of each management person required under Section 135.37(a) who is authorized to act for the certificate holder, the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operation control under Section 135.77.

7. Section 135.37(a), which provides that each certificate holder, other than one who uses only one pilot in the certificate holder's operations, must have enough qualified management personnel in those positions listed in parts (1) through (3) of this subsection, or in equivalent positions, to ensure safety in its operations.

8. Section 135.63(c), which states in pertinent part that for multiengine aircraft, each certificate holder is responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest must be prepared before each takeoff and must include the items listed in items 1 through 8 of this subsection.

9. Section 135.77, which states that each certificate holder is responsible for operational control and shall list, in the manual required by Section 135.21, the name and title of each person authorized by it to exercise operational control.

10. Sections 135.83(a)(2), (3) and (5), which state that the operator of an aircraft must provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them:

....

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate.

(3) Pertinent aeronautical charts.

....

(5) For multiengine aircraft, one-engine-inoperative climb performance data and if the aircraft is approved for use in IFR or over-the-top operations, that data must be sufficient to enable the pilot to determine compliance with Section 135.181(a)(2).

11. Section 135.87(c)(1), which states that no person may carry cargo, including carry-on baggage, in or on any aircraft unless it is properly secured by a safety belt or other tie-downhaving enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions, or for carry-on baggage, it is restrained so as to prevent its movement during air turbulence.

12. Section 135.100(a), which states in pertinent part that no certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft.

13. Section 91.9, which states that no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

By reason of the circumstances set forth in the foregoing paragraphs, it appears to the Administrator that Flight Group, Inc. is no longer qualified to exercise the privileges of an Air Carrier Operating Certificate. Therefore, the Administrator finds that safety in air commerce or air transportation and the public interest require the revocation of its certificate. Furthermore, the Administrator finds that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of this order.

NOW THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Sections 609 and 1005 of the Federal Aviation Act of 1958, as amended, that:

1. Air Carrier Operating Certificate No. 3-EA-169 held by Flight Group, Inc. is hereby revoked on an emergency basis.

2. The revocation shall become effective as of the date of this order.

3. Flight Group, Inc.'s certificate must be surrendered at once by mail for delivery to the Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

Loretta E. Alkalay
Acting Regional Counsel

By:
Paul A. Lange
Attorney

APPEAL

Flight Group, Inc. may appeal from this order within ten (10) days from the date it is served by filing a Notice of Appeal with the National Transportation Safety Board (NTSB), 800 Independence Avenue Southwest, Washington, D.C. 20594. However, due to the fact that its Air Carrier Operating Certificate has been revoked on an emergency basis, the revocation of its certificate will remain in effect during the pendency of any proceedings before the NTSB. Rules 821.54 through 821.57 of the Board's Rules of Practice in Air Safety Proceedings apply to such an appeal. In the event of an appeal to the NTSB, a copy of this order will be filed with the NTSB and will serve as the Administrator's complaint.

cc: Chief Judge William Fowler
Office of Administrative Law Judges

APPENDIX VI

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - NEWARK

ORIGINAL FILED
MAR 2 1988
WILLIAM T. WALSH, CLERK

MICHAEL A. TIER
224 Atlantic City Blvd.
Pine Beach New Jersey 08741
201-240-1300
Attorney for Plaintiff

Civ 88-997 (JWB)

FLIGHT GROUP, INC.

v

UNITED STATES DEPARTMENT
OF TRANSPORTATION - FEDERAL
AVIATION ADMINISTRATION

AMENDED

COMPLAINT IN EQUITY

No.

1. Plaintiff, Flight Group, Inc., is a Pennsylvania Corporation engaged in the enterprise and business of providing on demand air transportation of passengers and cargo and having as its main place of business Pottstown Limerick Airport, Pottstown, Pennsylvania.
2. Defendant, U.S. Department of Transportation, Federal Aviation Administration (Eastern Region), is a government agency having as it's regional headquarters Jamaica, New York.
3. Jurisdiction is founded/based on the federal issue of a taking of property without due process of law; abuse of Administrative authority and, procedure under color of official action.
4. On or about September 29, 1987 the Federal Aviation Administration (FAA) began an investigation of Buffalo Air Express (now defunct), Camelot Couriers LTD, and Qualified Enterprises, Inc.

5. During the investigatory stage any part 135 carrier, to include plaintiff, became a focus of the investigation.

6. Only the major part 135 carrier providing service to "Camelot or Qualified" were compelled to give unilateral depositions during which coursel for said carriers were not permitted to question carriers, object beyond the hearing office allowance or otherwise provide testimony to present a "Fair and Full" picture.

7. Plaintiff herein was compelled to give testimony under this unilateral system, with certificate action being threatened unless/and until plaintiff submitted to deposition

8. Plaintiff, although cooperative, was not able to address important issues.

9. To induce Plaintiff to say, testify, or confirm what would be necessary to sustain defendants burden, defendant has engaged in harassment, utilized government resources, and imposed unduly burdensome checks, reviews and audits as well as committing intentionally disruptive acts generally; all such activities were committed under "color of authority", however such activity was for alterior motive.

Specifically defendant has:

a. Authorized and conducted two "Base" inspections within a 2 1/2 week period. Such inspections require plaintiff to commit resources (director of maintenance, corporate President, secretary as minimum).

b. Defendant authorized and conducted a minimum of five "ramp" inspections since September 1987. The ramp inspections were excessive, while other operators not associated with Camelot or Qualified were inspected, however said inspections were cursory in nature. The excessive nature of these inspections caused as much as 2 hour delays, some causing cancellation of the trip; all being contrary to Regulation. Thereafter the FAA cited Plaintiff and its employees for violations from these ramp inspection for conditions the FAA themselves created. In some cases they engaged in the illegal entry and search of Plaintiff's aircraft and its pilots flight cases.

c. Threats have been made against Plaintiff. FAA officials have announced the "FAA intends to shut down every carrier dealing with Camelot and Qualified" if and because they have been unsuccessful in directly closing Camelot down.

d. The FAA has ignored evidence supplied to them which negates the foundation upon which this revocation is based. Specifically, the FAA cites in their order a series of events for which evidence has been supplied which refutes the statements of discharged employees. The FAA has chosen to give full faith and credit to discharged employee and no credit to the records of Plaintiff all to accomplish the aim or goal of the FAA. That is to shut down Camelot. The FAA has chosen to disregard the obvious conflicts of a terminated employee and instead, shut down Plaintiff.

10. Defendant has uniformly and knowingly and in arbitrary manner employed the emergency revocation procedures available to them for the sole purpose and design of "putting Camelot and Qualified out of business" and as such is not an order pursuant to regulation and statute; but merely a document purporting to be an order for ulterior motives.

11. Defendant states, in support of their Emergency Revocation Order, actions which are not of an emergency nature and are ancient in time.

12. Defendant knows and understands a revocation of Plaintiff's part 135 operating rights for any length of time beyond a day or two will result in plaintiff being forced from business and thus impact on the defendants announced target - Camelot.

13. Defendant is aware the various administrative procedures available to plaintiff in addressing its Emergency Revocation is inadequate and not timely to allow plaintiff review. Plaintiff will first be forced from business.

14. Defendant has utilized their administrative procedures to force Camelot and Qualified from business.

15. A program was launched to intimidate pilot personnel. Repeated ramp inspections of the same pilots and identical aircraft in a 30-45 day period became common. The nature and extent of the inspection was very intimidating. (See Exhibit A, B)

16. Defendant's target is Camelot and Qualified. However, Defendant has been unable to "carry the day" against Camelot and Qualified. They seek to "ACCOMPLISH" with their emergency revocation order against Plaintiff that which they could not do to Camelot and Qualified directly.

17. Plaintiff performs approximately seventy (70%) per cent of Camelot's air operations. This fact was known to defendant at the time defendant determined and executed the emergency revocation order

18. Plaintiff never relinquished operational control of its aircraft. This was testified to by all witnesses known to Plaintiff. However defendant has chosen to "create relinquishment" as a means to accomplish their goal of "Shutting Camelot and Qualified down".

19. Plaintiff never permitted Camelot to direct or terminate any employee of Plaintiff. To the contrary, defendant has in an attempt to secure this intended goal, perverted the testimony and evidence presented.

20. Plaintiff by manual requirement, by memo and law supervised and directed the loading of Plaintiff's aircraft. Camelot never directed the loading of Plaintiff's aircraft. (See Exhibit A, B and C).

21. Further, since the preliminary order of the Honorable Judge Bissell, in U.S. v. Qualified, 88-480 plaintiff has taken additional steps to insulate themselves from any appearance of wrongdoing. (See Exhibit C)

22. Defendant's Complaints, as contained in their undated Emergency Revocation Order are so vague as to give Plaintiff no notice of alleged underlying facts and routinely ignores a degree of fairness or the rights of due process which plaintiff is entitled to (See Exhibit C).

23. Plaintiff takes exception to the findings and blanket Conclusions of Defendant's Emergency Revocation Order.

24 Defendant is aware that the nature of the air cargo and air transport business is such that a cessation of activity for any period of time, particularly when contracts are pending, would result in "Forcing or Placing" the carrier out of business.

25. Beyond plaintiff's attack on the substance of defendant's Emergency Revocation Order, plaintiff alleges defendant's Emergency Revocation Order is not an order anticipated or authorized by statute or regulation. Instead it is a tool "under color of authority" invented and employed by defendant to accomplish their targeted goal placing Camelot and Qualified out of business.

26. The administrative procedure for the FAA does not allow for emergency hearing excepting with a 2 week delay. Further, the administrative procedure does not allow for discovery upon which to prepare a case if the emergency procedure is elected. Thus Plaintiff has no adequate remedy at law.

27. Plaintiff will be immediately, permanently and irreparably harmed should injunctive relief not be granted.

28. Defendant has no statutory or regulatory authority to issue its Emergency Revocation Order.

HEFORE, Plaintiff requests this Honorable Court issue:

a. A temporary restraining order preventing defendant from entering, enforcing or applying the undated emergency order of Acting Regional Counsel directing Plaintiff to surrender his part 135 operating certificate.

b. Enter a permanent injunction preventing defendant from entering, enforcing or applying the undated emergency order of Acting Regional Counsel directing plaintiff to surrender his part 135 operating certificate.

c. Dismiss the undated Emergency Temporary Order of Defendant.

d. Grant any other relief the Court finds just and reasonable.

Michael A. Tier

AFFIDAVIT

I, Thomas O. Miller, being of lawful age and being sworn according to law says I have read the foregoing complaint and certify it is true and correct according to my best information, knowledge and belief.

Thomas O. Miller

Thomas O. Miller

SS.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 1st DAY
OF MARCH, 1988.

Judith H. Fegan
NOTARY PUBLIC

JUDITH H. FEGAN, Notary Public
Lower Pottsgrove Twp. Montg. Co.
My Commission Expires Jan. 8, 1992

AFFIDAVIT

Allen Leslie Stevens, being of full age, under oath depose and say.

1. I was employed by Flight Group, Inc. from August 26, 1987 to January 5, 1988 as a pilot.

2. During my employment I was approached numerous times by the FAA concerning the investigation of Camelot Couriers and Qualified Enterprises.

3. During the investigation I was harassed by FAA officials to the extend, but not limited to the following:

   A) I was ramp inspected numerous times during my employment with Flight Group, primarily at Teterboro, New Jersey.

   B) FAA officials attempted to interfere with my duties as Pilot-In--Command in order to conduct inspections. During numerous inspections the Flight Group Director of Operations was present upon his insistence the inspectors would wait until I was finished preforming my duties before beginning their inspections.

   C) On January 11, 1988 inspectors at Teterboro inspected my airplane again. Their claim that I did not have pertain Aero Nautical Charts is invalided in that I was carrying Company provided Jeppesen Charts which meet FAA requirements for Aero Nautical Charts.

   D) Additionally on that same day while being detained, my Director of Operations ordered and supervised the fueling of the airplane. Therefore to my knowledge this airplane was not fueled contrary to FAA Regulations and/or Company Manual. As Pilot-In-Command it is within my authorization to delegate this duty to a qualified crewmember or management personnel of the company.

   E) On January 28, 1988, the FAA claims that I operated an aircraft from Philadelphia, PA to Teterboro, NJ without having cargo on board properly secured is a malicious and incorrect statement.

4) Incorrect statements such as the ones listed previously seem to be the norm for ramp inspection at Teterboro Airport. Other ramp inspections I have been involved in at other airports were conducted in a courteous and professional manner.

5) FAA harassment during this investigation became so intimidating that for that reason alone I left the employ of Flight Group.

6) In reading the allegations in the revocation order I find, in my dealings with the customer and Flight Group that I was never intimidated, forced, or coerced into operating an improperly loaded aircraft, aircraft that was unairworthy or when weather was not safe for flight. It was my policy to follow the company practices as outlined in it's company manual and in the memo's I received concerning procedures flight operation.

I realize that if I make intentional misrepresentations I am subject to punishment

Further I make this statement pursuant the Unsworn Falsification to authorities provision in the Pennsylvania Penal Code.

Sworn this 28 day of February 1988

Allen Leslie Steve
Allen Leslie Stevens

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 1st DAY

OF MARCH, 1988.

Judith H. Fegan
NOTARY PUBLIC

JUDITH H. FEGAN, Notary Public
Lower Pottsgrove Twp. Montg. Co.
My Commission Expires Jan. 9, 1992

AFFIDAVIT

I, Robert Girona, being of full age, under oath depose and say,

1. I am employed by Flight Group, Inc. since September 21, 1987 as a pilot.

2. During my employment I have been approached numerous times by the FAA concerning the investigation of Camelot Couriers and Qualified Enterprises.

3. During the investigation I have been harassed by FAA officials to the extent, but not limited to:

   A. One September 29, 1987 as Pilot-In-Command of N77FA I was informed by Camelot Personnel that FAA officials had boarded and were searching through my airplane. FAA Regulations, specifically Part 135.75 states that FAA Aviation Safety Inspectors must identify themselves to the "Pilot-In-Command of an aircraft" before being allowed free and uninterrupted access to the pilot compartment. This was not the case and therefore the inspectors involved are not only in violation of the FAR's, but also in violation of criminal statutes. To further complicate matters, upon returning to the aircraft I witnessed an inspector searching the personal flight case of my Second-In-Command, again in violation of Federal and Criminal laws. Upon completion of their inspection I was asked to produce documents which could no longer be easily located in the mess that they had created in my aircraft. Subsequent to their departure I was able to locate the missing material. The length of time taken to conduct the ramp inspection was such that the customer was forced to use another aircraft to continue and complete the flight for which I was scheduled.

   B) On one occasion I received a telephone call from an FAA inspector claiming to be investigating the case again Camelot Couriers and Qualified Enterprises. During this conversation I was lead by the inspector to believe that Ben Scheufele, Flight Group's former Chief Pilot, had revealed information to him that I had taken money under the table to fly aircraft over weight and other allegations which I do not remember at this time. The inspector specifically asked me if I had taken, or accepted money under the table or if I knew of this practice being conducted by the customer. Additionally I was asked if the customer or my employer had forced or coerced me to commit illegal acts or acts contrary to company policy. The tone of the questioning was such that it was indicated that action could be taken against me if I refused to cooperate. Again I indicated to them that I was not aware of or involved in any of the acts that had been indicated to me or any acts contrary to laws or policies in effect.

Page 2

4. In reading the allegations in the revocation order against Flight Group, I find, in my dealings with the customer and Flight Group that I was never intimidated, forced or coerced into operating an improperly loaded aircraft, aircraft that were unairworthy, or when weather was not safe for flight. It is my policy to follow the company practices as outlined in it's company manual and in the memo's I received concerning procedures on flight operation.

I realize that if I make intentional misrepresentations I am subject to punishment.

1st MARCH

Sworn this ~~27~~ day of ~~February~~ 1988

Robert Girona

Sworn to and subscribed before me
this [illegible] day of [illegible] 19[illegible]

[illegible]
NOTARY [illegible]
[illegible]

AFFIDAVIT

I, Thomas D. Miller, being of full age, under oath depose and say,

I am founder of Flight Group, Inc. and I am employed as President and Director of Operations.

During my employment I have been approached by the FAA concerning Camelot Couriers and Qualified Enterprises. I have given depositions to the FAA on the nature of Flight Groups relations with above companies.

This Affidavit is being given to refute the allegations of the undated Emergency Order of Revocation issued to Flight Group, Inc. Docket number 39EA050010 by the FAA. This order, in my opinion, has been issued as part of the on going attempt by Loretta E. Alkalay, Acting Regional Counsel for the FAA Eastern Region Headquarters, to do irrevocable harm to Camelot Couriers and Qualified Enterprises subsequent to her failure in this honorable Court to put them out of business. Transcripts of previous statement made by Ms. Alkalay on the record in this court concerning the Camelot and Qualified matter affirm this is another attempt to put my customers, as well as myself, out of business.

I will answer each item of each allegation in the order that it appears in the Emergency Order.

1. On the issues of operational control, attached Exhibit I contains documentation defining operational control, the regulation explaining operational control, and my notes on a conversation with Mr. Beitel of the Regulatory Division of the FAA in Washington D.C. It shows that no attempts were made to relinquish operational control to any of my customers. FAR 121.6 C1-6 clearly shows the items that I controlled. My customers in not way control or affect my decisions concerning items 1-4. Item 5 must be looked at from a specific aircraft assignment point of view, which my customers do not control. My customers only request that a specific route be flown at specific times with their weight requirements considered.

    A. To this end the only directing or redirecting of my flights is a request made by the customer either to management personnel or the Pilot-In-Command to make changes that may be necessary from day to day in the routes flown. Exhibit II clearly states our policy concerning operations for our customer in the items that we agree to concerning this operation. Our attempt is to provide our customer with the highly reliable, and quality of service they and their customers demand.

B. Myself and my management personnel from time to time may see fit to terminate, or reassign an employee that a customer may dislike for one reason or another. We also retain the right not to make changes requested by a customer, both of the options have been exercised and will continue to be exercised at our discretion and not my customers.

C. Over the years we have found that due to the quantify of work to be loaded aboard our aircraft at times, assistance in loading is necessary to help reduce pilot fatigue and to **enhance** safety. Under the supervision of the Pilot-In-Command our customers employees from time to time helped our pilots load their airplanes. Exhibit II and III clearly states our company policy on who is responsible for the loading and unloading of company aircraft. At no time has or should my company personnel relinquish this responsibility to another entity.

D. At no time has a customer been allowed to intimate, force, coerce my personnel into unsafe flight conditions. Attached affidavits of present and former employees and my customer will collaborate this statement.

E. No evidence exists that my customers control my operations in any way..

2. This statement seems to be incorrect as my client owns a company in Arizona named Merell Air Charter that presently holds an operating certificate issued by the FAA.

3. Camelot Couriers and Qualified Enterprises personnel are not a part of my company nor are they listed as a part of my company. No agreements exist that would make it necessary to do so.

4. Exhibit IV contains the documentation indicating the reasons for terminating Mr. Silver. I do not tolerate abusive attitudes towards customers and their employees, clearly evident in this case. Additionally a key witness of a the FAAs' suit against Camelot Couriers and Qualified Enterprises continued Mr. Slivers flight without removing any material previously loaded. The manifest included in Exhibit III verified the aircraft to the 55 lbs. under the maximum limit and within the center of gravity allowable.

5. Exhibit III clearly states our policy on preparing accurate and complete load manifests. Affidavits included from some of our pilots clearly indicate this statement by the FAA to be in error.

6. Again, Exhibit III clearly indicates our policy on aircraft loading. Additionally, the FAR's clearly specify weather factors that may necessary cancelation of a flight. It is our company policy to follow these laws to the letter. In many cases changes in weather conditions well into an aviation weather forecast period may vary to such an extend as to invalidate all or portions of a forecast The regulations clearly allow for pilot interpretation of conditions to supersede some of the conditions that may normally prohibit a departure.

7. My company has one of the more extensive maintenance departments in the area. We greatly exceed the maintenance requirements of the FAR's. I find it hard to believe that the FAA can show any trend of poor maintenance. Additionally I know of only one instance where an aircraft accidentally may have been released for flight improperly. This matter concerns an item that is allowed to be inoperative according to the aircraft minimum equipment list (MEL). The item deferred would not allow the aircraft to be flown at night. Since this possible occurrence happened nearly 1 and 1/2 years ago, we do not retain records that could show us if the aircraft was or was not flown.

8. Mr. Quiros was released from employment for the final occurrence in a growing trend of problems, he was causing unjustly. Since his wedding in December his performance as a line pilot for Flight Group, Inc. deteriorated substantially. He was repeatedly grounding aircraft that did not have any problems. I saw a trend developing where it appeared he may be compromising safety with his own acts. I therefore determined it was necessary to release him from his employ with Flight Group, Inc. Exhibit IV contains copies of work discrepancy reports documenting some of the problems that were occurring.

9. Exhibit VI and VII show the response to the FAA concerning the activities of January 11, 1988. As has been the case with many of the ramp inspections conducted at Teterboro Airport, the FAA inspectors involved have a clear lack of understanding of the regulations which they are supposed to enforce. Page 1 of Exhibit VII indicates items which the FAA believed to be in error. The only error that occurred was in the FAA citing us on these items. Nowhere in the regulations have I been able to locate the requirement for VFR Navigational charts to be carried on each airplane. The wording used in FAR 135.83 A 3 is "Fertinent Aeronautical Charts.

The Jeppesen navigational charts clearly indicate on each chart that it "meets FAA requirement for aeronautical charts". Pertinent is defined as "connected with the matter at hand". The object is to fly safety from Point A to Point B. Jeppesen charts are "well connected with the matter at hand", giving the pilot the needed information to navigate safely between given points. If Ms. Alkalay can show me where it is written in the FAR's VFR carts are required I will gladly supply my personnel with pertinent VFR charts. As for other items discovered during the ramp inspections conducted January 11, 1988 the FAA is totally in error and the responses clearly verify this fact.

10. Refer to answers for allegations Number 1 C, and 4, 5, 6. These questions sufficiently answer our company's policy concerning supervision of aircraft loading.

11. FAR 135.100 allows for transmissions of the nature requested by our client and required by our Flight Group Memo dated March 4, 1987. These communication procedures were implemented in the interest of safety in that they were designed to enhance safety by alerting ramp personnel of impending arrivals and departures. This procedure allows for removal of unnecessary ramp equipment and puts personnel on notice to be cautious. A time critical flight arriving late would be given a parking position closer to the sorting area allowing expedient turn around of the aircraft. Additionally aircraft requiring a number of personnel to assist with the large volume of cargo to be transferred could be positioned close to the ramp access area avoiding constant danger of personnel continuously crossing open ramp areas. As has been the case with Ms. Alkalay , she failed to give the the full picture. FAR 135.100 goes on to say that unnecessary conversation will not be required or allowed during critical phases of flight. Clearly the enhancement of grounds operations safety is critical and therefore is necessary.

12. Affidavit submitted by Mr. Stevens and Exhibit VI and VII clearly show the FAA again is in error. Since the FAA again was detaining one of my pilot's from preforming one of this normal duties. I, myself, ordered and supervised the fueling of this airplane. It was done properly and the aircraft was grounded properly. Fearing reprisals from the FAA concerning pending aircraft certifications projects, Teterboro Aircraft Services declined submitting an affidavit from their employee involved. However, a phone conversation with their line service manager, Mr. John McGuire, verified it is their company policy and their insurance policy requires grounding of every aircraft during refueling procedures. All kidding aside what lineman would be dumb enough not to follow required procedures knowing that FAA officials are watching.

13. I am as shocked and appalled that the FAA would even consider listing this item in this document. This situation is a clear indication of malice intended by Ms Alkalay. FAR 135.75 requires an inspector to identify himself to the Pilot-In-Command of a flight before being given access to the crew compartment In this case this was not done in addition the inspectors were witnessed boarding the aircraft without permission and seen searching the private flight case of the Co-Pilot without permission. This rummaging rendered the interior of the airplane a complete mess. Then, only after the interior had been completely torn apart, the inspectors requested items which they contend were not on board the aircraft. These actions are clearly a violation of the FAR's and may also have criminal implications. Requests for identification of the inspectors involved has met with less than favorable responses by Ms. Alkalay. The items supposedly missing for the aircraft were in fact aboard, except for the airplane flight manual, which had been on board before the illegal entry of the aircraft by the inspectors. Exhibit IX contains numerous letters and items concerning this plain illegal act.

14. Mr. Steven's affidavit states this allegation totally inaccurate. Upon his arrival at Teterboro at 0010 on the morning of January 28, 1988. Mr. Stevens immediately undid the cargo net for the purpose of unloading the airplane. Since the airplane was 1 hour and 20 minutes late arriving at Teterboro, time was of the essence. The inspectors main purpose for being there was to distribute the restraining order by the Honorable Judge John W. Bissell. Contrary to orders given the FAA not to interfere with Camelot's operations, they proceeded to preform a ramp inspection and as usual the 3 items identified as being in violation of the FAR's were again in fact not in violation. The first item, the duplicate manifest, had been left at the departure point, as it is supposed to be. Passenger briefing cards are not required for cargo only operations. Beyond that the inspectors requesting to see the passenger briefing on the ramp inspection of January 11 had been shown the copy of the card that is kept in the back of the Company Manual kept on board the aircraft. I know this to be a fact, because I am the one who showed it to Mr. Symons on the 11th and reminded him again on the 28th of that fact. FAR 135.85 allows for the carrying of persons with out compliance of the passenger carrying provisions of Part 135. Passenger carrying provisions include passenger briefing. Not subject to this requirement are crewmembers, or other employees of the certificate holder and or a person authorized by the Administrator who is preforming a duty connected with a cargo operations of the certificate holder. There are also other exceptions. (See Exhibit X).

15. Exhibit XI lists the 3 personnel that are required. A Director of Operations, Chief Pilot, and Director of Maintenance. Their contention that we did not have these positions filled is erroneous. The Regulations give the Operator 10 days to inform the FAA of change to its operations manual. At no time has a required position been vacant.

It seems that by examining of the facts in this case that the only one in violation of any regulations is the FAA and I personally believe that more then just FAR 135.75 have been violated. I find it hard to comprehend how us or our customers could have violated the 13 regulations contended by the FAA

up to this point I have not discussed the nature of the business of my other clients. My company is the sole supplier of **Emergency Medical Flights** to a highly specialized laboratory in the Philadelphia area. The public safety is greatly endangered by our not being able to operate in that many of the specimens we transfer for this laboratory daily are life critical in nature. Allowing the FAA revokation order to stand could threaten the lives and well being of many. I was hoping to have a sworn statement for this customer verifying these contentions. However, the person authorized to give such a statement has not been in his office since Thursday. If the court requests, he may be contacted or a statement obtained verifying what I am saying.

Once again I would like to bring to light Ms. Alkalay s comments concerning her desire to put Camelot Couriers and Qualified Enterprises out of business no matter what it takes. One the record she has made comments which financially impact my company and others like mine. In her desire to remove companies like mine and my customers she will affect all companies that provide a key service to the banking system by providing the only viable cost efficient method to transporting financial documents. Her success in this matter could effect the entire worldwide monetary systems by effectively eliminating the only viable and cost effective method of transferring financial documents of the type Camelot Couriers and Qualified Enterprises handle for their customers.

I implore you to give me back my authorization to operate until I have the opportunity to defend the FAA's allegation before the National Transportation Safety Board. I feel confident in your ability to see through this smoke screen that has been put up by the FAA officials solely based on disgruntled employees of the operators involved.

Sworn this 28th day of February 1988

Thomas O. Miller

Thomas O. Miller

Sworn to & subscribed
before me this 1st day
of March, 1988
Judith H. Fegan
JUDITH H. FEGAN, Notary Public
Lower Providence Twp., Montg. Co.

EXHIBIT I

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Definition of Operational Control 1

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"Manifold pressure" means absolute pressure as measured at the appropriate point in the induction system and usually expressed in inches of mercury.

"Medical certificate" means acceptable evidence of physical fitness on a form prescribed by the Administrator.

"Minimum descent altitude" means the lowest altitude, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering in execution of a standard instrument approach procedure, where no electronic glide slope is provided.

"Minor alteration" means an alteration other than a major alteration.

"Minor repair" means a repair other than a major repair.

"Navigable airspace" means airspace at and above the minimum flight altitudes prescribed by or under this chapter, including airspace needed for safe takeoff and landing.

"Night" means the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time.

"Nonprecision approach procedure" means a standard instrument approach procedure in which no electronic glide slope is provided.

"Operate," with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in §91.10 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).

"Operational control," with respect to a flight, means the exercise of authority over initiating, conducting, or terminating a flight.

"Overseas air commerce" means the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct of furtherance of a business or vocation, in commerce between a place in any State of the United States, or the District of Columbia, and any place in a territory or possession of the United States; or between a place in a territory or possession of the United States, and a place in any other territory or possession of the United States.

"Overseas air transportation" means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in commerce —

(1) Between a place in a State or the District of Columbia and a place in a possession of the United States; or

(2) Between a place in a possession of the United States and a place in another possession of the United States;

whether that commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

"Over-the-top" means above the layer of clouds or other obscuring phenomena forming the ceiling.

"Parachute" means a device used or intended to be used to retard the fall of a body or object through the air.

"Person" means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

"Pilotage" means navigation by visual reference to landmarks.

"Pilot in command" means the pilot responsible for the operation and safety of an aircraft during flight time.

EXHIBIT I PAGE 2

The rules in this Part which refer to a person certificated under §121.3 apply also to any person who engages in an operation governed by this Part without the appropriate certificate and operations specifications required by §121.3.

121.5 CHARTER FLIGHTS OR OTHER SPECIAL SERVICE OPERATION: FLAG AND DOMESTIC AIR CARRIERS

Each flag or domestic air carrier, or air carrier holdin g an operating certificate under *Part 127 shall conduct the following operations under the rules of this Part applicable to supplemental air carriers and commercial operators:

(a) Any charter flight or other special service conducted over routes into airports listed in its operations specifications, unless the air carrier obtains authority from the Administrator to conduct those operations under the rules that would otherwise apply to that air carrier's operations.

(b) Any charter flight or other special service that involves, in whole or in part off-route operations.

121.6 LEASING OF AIRCRAFT

(a) Prior to conducting operations, each certificate holder must provide the Administrator a copy or a written memorandum of the terms of any leasing arrangement whereby that certificate holder agrees to provide a large aircraft and at least a pilot flight crewmember to another person certificated under this Part 121, and *Part 123, or 135 of the Federal Aviation Regulations or engaged in the operation of a foreign air carrier or other foreign airline.

(*Not published herein - Ed.)

(b) Upon receiving a copy of an agreement, or a written memorandum of the terms thereof, the Administrator determines which party to the agreement is conducting the operation and issues an amendment to the certificate holder's operations specifications containing the following:
   (1) The names to the parties of the agreement and the duration thereof.
   (2) The nationality and registration numbers of each aircraft involved in the agreement.
   (3) The type of operation (e.g. scheduled, passenger, etc.).
   (4) The areas of operation.
   (5) The regulations of this chapter applicable to the operation.
   (6) A statement of the economic authority, if available.

(c) In making a determination under paragraph (b) of this section, the Administrator considers the responsibility under the agreement for the following:
   (1) Crewmembers and training.
   (2) Airworthiness and performance of maintenance.
   (3) Dispatch.
   (4) Servicing the aircraft.
   (5) Scheduling.
   (6) Any other factor the Administrator considers relevant.

121.7 COMMON CARRIAGE BY COMMERCIAL OPERATOR

An applicant for a commercial operator certificate, or a commercial operator, who carries or intends to carry passengers for compensation or hire as a common carrier between two points entirely within any State with the frequency set forth in paragraph (a) or (b) of this section shall show that it is able to, and will conduct, those operations under the rules applicable to domestic air carriers or any other rules that the Administrator finds to be necessary to provide an appropriate level of safety for the operation:

(a) Two flights, or one round trip a week on the same day or days of the week for eight or more weeks in any 90 consecutive days.

(b) A total of 36 or more flights or 18 or more round trips in any 90 consecutive days.

121.8 OPERATIONS OF AIRPLANES HAVING A MAXIMUM PASSENGER SEATING

135.73 INSPECTIONS AND TESTS

Each certificate holder and each person employed by the certificate holder shall allow the Administrator, at any time or place, to make inspections or test (including en route inspections) to determine the holder's compliance with the Federal Aviation Act of 1958, applicable regulations, and the certificate holder's operating certificate, and operations specifications.

135.75 INSPECTORS CREDENTIALS: ADMISSIONS TO PILOT'S COMPARTMENT: FORWARD OBSERVER'S SEAT

(a) Whenever, in performing the duties of conducting an inspection, an FAA inspector presents an Aviation Safety inspector credential, FAA Form 110A, to the pilot in command of an aircraft operated by the certificate holder, the inspector must be given free and uninterrupted access to the pilot's compartment of that aircraft. However, this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the pilot's compartment in the interest of safety.

(b) A forward observer's seat on the flight deck, or forward passenger seat with headset or speaker must be provided for use by the Administrator while conducting enroute inspections. The suitability of the location of the seat and the headset or speaker for use in conducting enroute inspections is determined by the Administrator.

135.77 RESPONSIBILITY FOR OPERATIONAL CONTROL.

Each certificate holder is responsible for operational control and shall list, in the manual required by §135.21, the name and title of each person authorized by it to exercise operational control.

135.79 FLIGHT LOCATING REQUIREMENTS

(a) Each certificate holder must have procedures established for locating each flight, for which an FAA flight plan is not filed, that—
   (1) Provide the certificate holder with at least the information required to be included in a VFR flight plan;
   (2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and
   (3) Provide the certificate holder with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(b) Flight locating information shall be retained at the certificate holder's principal place of business, or at other places designated by the certificate holder in the flight locating procedures, until the completion of the flight.

(c) Each certificate holder shall furnish the representative of the Administrator assigned to it with a copy of its flight locating procedures and any changes or additions, unless those procedures are included in a manual required under this part.

135.81 INFORMING PERSONNEL OF OPERATIONAL INFORMATION AND APPROPRIATE CHANGES

Each certificate holder shall inform each person in its employment of the operations specifications that apply to that person's duties and responsibilities and shall make available to each pilot in the certificate holder's employ the following materials in current form:

(a) Airman's Information Manual (Alaska Supplement in Alaska and Pacific Chart Supplement in Pacific-Asia Regions) or a commercial publication that contains the same information.

(b) This part and Part 91 of this chapter.

(c) Aircraft Equipment Manuals, and Aircraft Flight Manual or equivalent.

(d) For foreign operations, the International Flight Information Manual or a commercial publication that contains the same information concerning the pertinent operational and entry requirements of the foreign country or countries involved.

Exhibit I -Page 3

Notes on Telephone to Washington D.C. of February 26, 1988.

PREAMBLE: In an attempt to get a determination from the FAA on the factors that are used to determine operational control as it pertains to FAR 135. I made a total of 4 telephone calls to the FAA in Washington D.C. I spoke with the following people:

Harriett	(202) 366 - 4702
Bob Closey	(202) 366 - 4702
Robert Young	(202) 366 - 9285
John Cassidy	(202) 267 - 3073
Dick Seitel	(202) 267 - 8756

The following is the context with Mr. Dick Seitel. I asked Mr. Seitel to explain what factors are used by the FAA when determining who has "Operational Control" as it relates to FAR 135.77 and 135.23A. His explanation is as follows:

> First the definition of Operational Control of Part 1 of the FAR's applies. The factors used in determining what constitutes operational control and who holds that authority can be found in Section 121.6 B & C. Although 121.6 relates to aircraft leasing between operators, B & C of that regulation are used to regulate in an situation where operational control of an aircraft is at issue. He stated that the person controlling the majority of the items under C of the regulation is considered to have operational control.

EXHIBIT II

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EXHIBIT II - PAGE 1

Flight Group, Inc.

March 4, 1987

MEMO TO ALL PILOTS

Important Information concerning Camelot Courier/Qualified Air Routes.

D. Vendor's Operational Responsibility to Contractor under this agreement will be termed as follows:

1. Pilots will be required to pre-flight one hour before origin departure without exception.

2. Pilots will be required to fly scheduled flights if conditions are within F.A.A. minimum weather requirements. Vendor is required to call the Flight Hub Operations Center each afternoon with pilot's name, type aircraft and tail number assigned to each agreed route operated by Vendor.

3. Pilots are to use correct judgement with regard to weight and balance of aircraft utilized. It is also the responsibility of pilot to maintain a fuel load that will accommodate each cargo load necessary to complete agreement.

4. Communications by pilots in and out of our Teterboro Flight Hub will be mandatory on both inbound and outbound flight activity. Our company frequency is 130.85, which will be utilized as follows:

   Inbound: Communications required 10 minutes out, on ground and in block.

   Outbound: Notification required out of block and when aircraft is airborne.

5. Vendor will use the designated flight number assigned by Contractor. There will be no deviations allowed and assigned flight numbers will remain permanent unless otherwise notified by Contractor.

6. Pilots will be required to allow additional flying time from Home Base to compensate for scheduled arrival times during minimum conditions. Scheduled departures are to be adhered, with time allowances scheduled in advance to guarantee a positive effect on the assigned schedule arrangements.

7. Pilots will be required to notify the Teterboro Hub upon arrival at all destination airports. They are hereby instructed to report any problems incurred or expected prior to Vendor calling their own dispatch. This is mandatory, as time loss will be critical and proper notification to Contractor will allow for reposition of additional aircraft to cover assigned flight legs whereby Vendor is experiencing difficulties.

EXHIBIT II PAGE 2

8. While at Teterboro Hub, no pilots will be permitted in the Operations Office, but report directly to the Pilot's Lounge after official notification to Station Manager. Pilots are required to remain in the lounge area, as contractor will accept no responsibility in seeking pilots from designated rest areas and will request a change in pilots should this situation occur.

9. All pilots will be in their respective aircraft and receive clearance five (5) minutes prior to scheduled departure.

10. Clearance of the aircraft, including wing lockers, will be the responsibility of the pilot, including the fact that all compartments are secured prior to departure. Pilots will also assist ground courier in the loading and unloading of aircraft and are responsible for securing paperwork received from ground courier and placing directly in the cabin of the aircraft. No paperwork received from ground couriers at origin or destination are to be placed in the cargo section of the aircraft.

11. No passengers are to be authorized on any vendor aircraft if that passenger will necessitate cargo capability to be reduced. In all cases where passenger weight affects the ability of the aircraft to carry cargo, the passenger will be restricted from that flight under direct orders of Contractor.

Additional Requirements

1. CARGO CAPACITY
On all new routes or until otherwise instructed, all pilots will fuel in a manner to accomodate up to 1,000 pounds of cargo on each leg. This does not mean safety is to be compromised.

2. FUELING
Fuel is to be purchased at agreed stops or at stops where the layover is at least ½ hour in length, so plan accordingly, especially on new routes.

3. FLIGHT PLANS
Until canned plans can be filed by the Chief Pilot, all pilots with no exceptions will file full route flight plans every day. This will avoid delays due to unexpected weather.

4. CUSTOMER INQUIRIES
Unless otherwise instructed routes east of Teterboro and Albany are to be called "Qualified Air" routes. Routes out of Albany and Teterboro going west are to be called "Camelot Courier" routes. When unsure of who the customer is when asked, respond with "Qualified Air". Some stops are so sensitive that a Camelot response at the wrong place could cost us and our customer the contract. If the driver insists on knowing if Camelot is involved, politely refuse to answer and inform Teterboro of the problem.

Many Thanks!

EXHIBIT II PAGE 3

April 14, 1987

MEMO Memo #87-6

To: All Pilots Effective: 4/14/87
From: Director of Operations
Re: Camelot Contracts

All personell are to read again the Memo dated March 4, 1987 concerning our responsibilities on Camelot and Qualified routes. Too many problems are occurring with the quality of service we provide. THIS WILL CEASE IMMEDIATELY. If problems continue, corrective action will be taken. I will not tolerate pilot caused mistakes any more.

Additional Procedures to be Followed:

1. Call TEB operations 1 hour before scheduled departure. (ALB may call from home).
2. Call Flight Group dispatcher after calling TEB operations. Also give our dispatcher starting aircraft and heater hobbs times (hobbs times needed only on remotely based aircraft).
3. At end of night call TEB ops with arrival and departure times for the evening.
4. At each departure point, be at airplane ten minutes before scheduled departure to supervise and help load the aircraft. Know where and how much is on board.

Unusual Situations:

1. Attempt to accomodate all route changes requested by customer. Remember that only Wolfgang, Rick, or Larry can make changes.
2. If normal route exceeds duty or flight time limits, notify either me, Ben, or Dave so we can make any arrangements necessary for the next days flights. Don't wait to t last minute to let us know there was or is a problem.
3. Inform customer if a route change request will exceed flight or duty time limits BEFORE accepting the change. Contract myself, Ben or Dave if necessary.
4. Difficulties in performing a route segment either mechanical or otherwise are to be reported to TEB ops. immediately, not 1½ hour after scheduled departure. Camelot must be notified as soon as possible so they can attempt to recover from the loss service. Notify Flight Charter dispatcher immediately after contacting Camelot.

If we all work together, we can eliminate the problems that have been occurring recently. We must eliminate these problems if we are to continue growing with Camelot and Qualified.

Lets keep them happy.

TOM

cc: All Pilots
Tom Miller
Chuck Simmons
Ben Scheufele
Camelot 1) Larry
2) Gene
3) Rick

EXHIBIT III

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FLIGHT CHARTER

ATCO NO. 3EA - 169

DUTIES OF THE PILOT-IN-COMMAND (PIC) cont.

(g) The PIC shall insure that all check lists (normal and emergency) are completed at the appropriate time. It is necessary to physically touch each and every appropriate control or switch while visually checking it before proceeding to the next item.

(h) The PIC of an IFR flight or night flight will be issued a microphone, a headset, and a flashlight with two "D" cells. He will be responsible for these items.

(i) The PIC shall insure that all cargo doors and cargo restraint systems are secure before all flights with special attention given to Twin Engine aircraft with cargo areas ahead of the propellers and powerplants.

(j) Passenger Information briefing: 135.117

A. Pilot-In-Command or a designated crewmember will brief passengers.
  1. Emergency Procedures
  2. Before Take-Off
  3. After Take-Off
  4. Before Landing
  5. After Landing

Emergency Briefing
  a. Location of passenger briefing cards
  b. Location and operation of emergency exits
  c. Location and operation of Main Cabin Door
  d. Location and operation of Fire Extinguishers
  e. Location and operation of life vests when applicable
  f. Location and operation of any other necessary emergency equipment on board when applicable

Take-Off Briefing
  a. No smoking - (Turn on "No Smoking" sign if applicable)
  b. Fasten seatbelts - (Turn on "Fasten Seatbelt" sign if applicable)
  c. Place seat backs in upright position

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Revision 20

FLIGHT CHARTER

ATCO NO. 3EA-169

SECTION I - FLIGHT DEPARTMENT

FAR 135.23 (b) - Weight and Balance

1. The aircraft weight and balance computer, loading schedule or loading graph provided by the aircraft manufacturer for the particular aircraft shall be used to determine the actual total loaded aircraft weight and the actual loaded aircraft center of gravity. Flight Charter form number 135.65 (c) titled "Load Manifest" will be utilized to list Weight and Balance information.

2. Multiengine aircraft reweighing - The Director of Maintenance shall be responsible for compliance with 135.185. Prior to each flight the Pilot-In-Command shall refer to the aircraft log to determine that the aircraft is within the 36 calendar month limit. If the aircraft is due for reweighing, no further flight operations will commence until the aircraft has been reweighed.

3. In accordance with 135.63 (c) for each multiengine aircraft, a load manifest will be prepared in duplicate before take-off and must include the following information:
    1. Number of passengers.
    2. Total weight of loaded aircraft.
    3. Maximum allowable take-off weight.
    4. Center of gravity limits.
    5. Center of gravity of the loaded aircraft.
    6. Origin and destination
    7. Registration number.
    8. Identification of crew members.

4. Copies of the completed load manifest will be carried by the Pilot-In-Command to home station and a copy will be left at the point of departure with a responsible entity prior to departure. If there is no significant change in fuel, passengers, or cargo load at intermediate stops on charter operations, the previous weight and balance computations may be used. The company will keep the completed load manifest for at least 30 days at its principle operations base, or at another location used by it and approved by the Administrator.

5. Each flight kit is supplied with load manifest forms to be used by the pilots.

FLIGHT CHARTER

ATCO NO. 3EA - 169

SECTION I - FLIGHT DEPARTMENT

Cargo Operations (continued)

II. Carriage of cargo only in passenger and baggage compartments.

No person may carry cargo in passenger and baggage compartments unless-

(a) The cargo is loaded in such a manner that it allows at least one emergency or regular exit to be available and unobstructed for all occupants should an emergency occur

(b) The cargo is secured in an approved manner to prevent the possibility of shifting.

(c) The loading of cargo will not exceed any floor or structural loading limitation, or center of gravity limitation as listed in the weight and balance section of the Pilot's Operating Handbook for each particular aircraft.

III. It will be the responsibility of the Pilot-In-Command to conform with all loading procedures and to insure that all cargo and passenger doors, and emergency exits are secure before each flight.

Air Ambulance Operations

General

All air ambulance operations by company flight and ground personnel shall be conducted in accordance with FAA Regulations, company policies, and the procedures outlined in this section.

Prior to all air ambulance flights, the Pilot in Command will discuss with the physician or medical person in charge, any special handling that may be required for the patient, such as altitude restrictions, length of flight, and passenger comfort requirements.

When medical oxygen equipment is to be used, the attending medical person in charge will be briefed by the pilot prior to departure and instructed to inform the pilot when the equipment will be used.

EXHIBIT IV

Table Of Contents

Page

Larry Silver Discrepancies 1

Load Manifest 2

EXHIBIT IV PAGE 1

WORK DISCREPANCY REPORT

Date: 11/25/87 **Name:** Larry Silver

Discrepancy: on 11/23/87, your first day on line, you were loaded at TEB by 23:00 and ready to depart. You were having a problem completing your weight + ballance. Two of our pilots Gabriel & Donnie showed you your mistake and how to compute the weights properly. You refused to believe these pilots were correct and the customers verification of the weight you were carrying. Our TEB flight ops mgr was called

OVER

Employee Comment:

11/24 employee was called by phone and the situation was discussed. He was informed that his attitude was unacceptable and that he was laid off until a position in TEB could be developed

Corrective Action: I discussed the situation with both customers involved on 11/24/87. Because of your attitude and the abusive language used with the employees of the customers I was asked to remove you from flying their flights. Since you are TEB based and they are my only TEB customer I have no option but to lay you off until I have other employment for you.

Employee Signature

Dir of Ops ~~Chief Pilot~~ **Signature**

Thomas C. Miller

OVER

EXHIBIT IV Page 1A

to reroute a few planes to cover the legs you were delaying beyond acceptable time limits. He did so and released you from duty for the evening

---

12/14/8: Further research by Donnie Bierski has revealed an employment history of problems. His previous employer released him for delaying a flight 5½ hrs due to inability to properly compute a weight & ballance. Because of this and other information, we see no purpose to be served by bringing him back later. He is effectively terminated this date

EXHIBIT IV PAGE 2

LOAD MANIFEST
(135.63C)

FLIGHT CHARTER
R.D. #3 Pottstown-Limerick Airport
Pottstown, PA 19464

Page 9
Date 10/10/
Revision 8
Appendix IV

Date of Flight	Time	Make & Model	N#	Flt. No.	Customer
11/23/87	2300	[illegible]	2690P	[illegible]	[illegible]

FROM	OFF	TO	ON	NO. PAX	GTOW	MAX TOW	T.O. CG	CG RANGE FWD.	CG RANGE AFT.
[illegible]	2345	HFD	0020	0	5475	5500	43.8	38.2	43.6
HFD	0105	BOS	0135		5232		39.6	36.0	43.6
[illegible]	0150	HFD	0225		4544		39.8	32.3	43.6
HFD	0240	TEB	0330		4394		33.9	32.0	43.6

AIRCRAFT TIME: CREW:

TODAY: 4093.7	P.I.C. [illegible]	P.I.C. SIGNATURE
FORWARD: 1882.5	S.I.C. —	
TOTAL: 1.2	OTHER —	

SPECIAL INSTRUCTIONS:

NOTES:

Final:

EXHIBIT V

Table Of Contents

Page

Work Discrepancy on Quiros 1/11/88 1

Work Discrepancy on Quiros 1/8/88 2

Work Discrepancy on Quiros 1/5/88 3

Work Discrepancy on Quiros 12/24/87 4

EXHIBIT V PAGE 1

WORK DISCREPANCY REPORT

Date: 1/11/88 Name: Gabriel Quison

Discrepancy: On 1/8/88 Gabriel delayed a flight at the last minute due to low weather conditions at the destination airport and forecasts for a potential for heavy icing. After delaying the flight for over three hours, even though the conditions had improved he informed the customer he wasn't going to fly and went home. I was contacted at BWI and asked if I could find out what was going on. It was reported that one of my aircraft that was to trail [redacted] Gabriel's flight to BOS had departed on time. Gabriel even talked to this pilot who informed him the conditions were good and he had only encountered light icing. Gabriel still refused to do the flight and went home. After checking the weather I contacted Gabriel to discuss the situation with him. I told him the weather along

OVER

Corrective Action:

Employee was terminated for this final incident in a growing string of problems.

Termination is effective 1/8/88

Employee Signature

Chief Pilot Signature

EXHIBIT V Page 1A

his route was nearly VFR and no-one was reporting any icing, including our other flights who were still out, myself included. He agreed to check the weather again. I called him back and he still refused to fly. I informed him of the problem I had with his decision and I gave him the choice to fly or be fired for cause. He chose the latter. I also discussed how I felt his wife had caused his performance to decrease to an unacceptable level and I suggested that he straighten out his priorities.

EXHIBIT V PAGE 2

WORK DISCREPANCY REPORT

Date: 1/8/82 **Name:** Gabriel Carson

Discrepancy:

grounded airplane at LCH (OSI again). Said there was a drop in fuel flow and a rise in EGT. I found no [illegible] test flying back with. On return flight nothing was wrong. In fact every gauge reading on all gauges matched perfectly.

Employee Comment:

Corrective Action:

told gabriel I was tired of his grounding planes without cause. Since his wedding his flying has gone to hell. He no longer is maintaining his schedules and that I feel his wife is affecting his flying by what she may be telling him to do. I Warned him that if this attitude and problems ~~[illegible]~~ continue to occur he will be Terminated.

Employee Signature

Chief Pilot Signature

EXHIBIT V PAGE 3

WORK DISCREPANCY REPORT

Date: 1/5/88 Name: Gabriel Quiroz

Discrepancy:

employee grounded airplane at CKA because of surging in fuel flow & RPM at cruise. ALB's pilot test ran and flew plane to verify a problem. Could not find anything wrong

Employee Comment:

Corrective Action:

warned Gabriel about grounding planes with nothing wrong. Also discussed trend I saw developing in his flying since his return from his honeymoon.

Employee Signature

Chief Pilot Signature

EXHIBIT V PAGE 4

WORK DISCREPANCY REPORT

Date: 12/24/87 **Name:** Gabriel Quinones

Discrepancy:

employee grounded a/c for a mechanical problem at LCA. Mechanics could not find anything wrong, & plane was ferried back to NTL

Employee Comment:

Corrective Action:

suggested he try to verify there is a real problem before grounding an airplane

Employee Signature

Chief Pilot Signature

EXHIBIT VI

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Page

Letter From FAA 1-2

A. Stavens Response 3-6

EXHIBIT VI PAGE 1

U.S. Department
of Transportation
**Federal Aviation
Administration**

Flight Standards District Office
150 Fred Wehran Drive, Room 5
Teterboro, New Jersey 07608
201-288-1745

January 21, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
File No: 88EA250007

Allen Leslie Stevens
P. O. Box 1061, Road #1
Leesport, PA 19553

Dear Mr. Stevens:

Personnel of this office are in receipt of a report which indicates that on January 11, 1988, a Piper Navajo aircraft N3525B, was ramp inspected at the Teterboro Airport, Teterboro, New Jersey.

Information furnished this office indicates that this aircraft had been operating in FAR 135 Air Carrier cargo flight operation without having on board the following:

1. Appropriate VFR Sectional Charts.
2. Passenger Briefing Charts.
3. Flight Load Manifest not completed in duplicate form and did not list number of passengers on board aircraft.
4. Jeppsen Airway Manuals missing revision #31 and 32 not posted nor completed.

Operation of this type may be contrary to sections of the Federal Aviation Regulations.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration. We would appreciate receiving any evidence or statements you might care to make concerning this matter within 10 days of the receipt of this letter. Any discussion or written statements will be given consideration in our investigation. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

Kenneth C. Symons
Aviation Safety Inspector

EXHIBIT VI PAGE 3

February 3, 1988

Allen Leslie Stevens
P.O. Box 1061, Road #1
Leesport, PA 19533

U.S. Department of Transportation
Federal Aviation Administration
Flight Standards District Office
150 Fred Wehran Drive, Room 5
Teterboro, New Jersey 07608

RE: File No. 88EA250007

In response to your letter dated January 21, 1988, I submit the following response for each item listed.

1. Section 135.93 of the FAR's (see attached Exhibit 1) calls for "Pertinent Aeronautical Charts" to be carried. No mention is made to VFR or IFR. Attached Exhibit 2 is a copy of the charts I carry, and as you can see they spell out clearly that they "Meet FAA Requirements for Aeronautical Charts" therefore I was in compliance with the regulations.

2. Part 135.85 and page 33 of the Flight section of the company ATCO manual state that employees may be carried aboard company aircraft without complying with the passenger carrying provisions of Part 135. The person with me was a pilot in training for the company. As such, passenger briefing cards were not required for the flight in question. However, the President/Director of Operations was on the ramp during the ramp inspection in question. He showed the inspector a copy of the passengers briefing card kept in th ATCO manual. Even though it is not necessary a copy of the passenger briefing card was in fact on board.

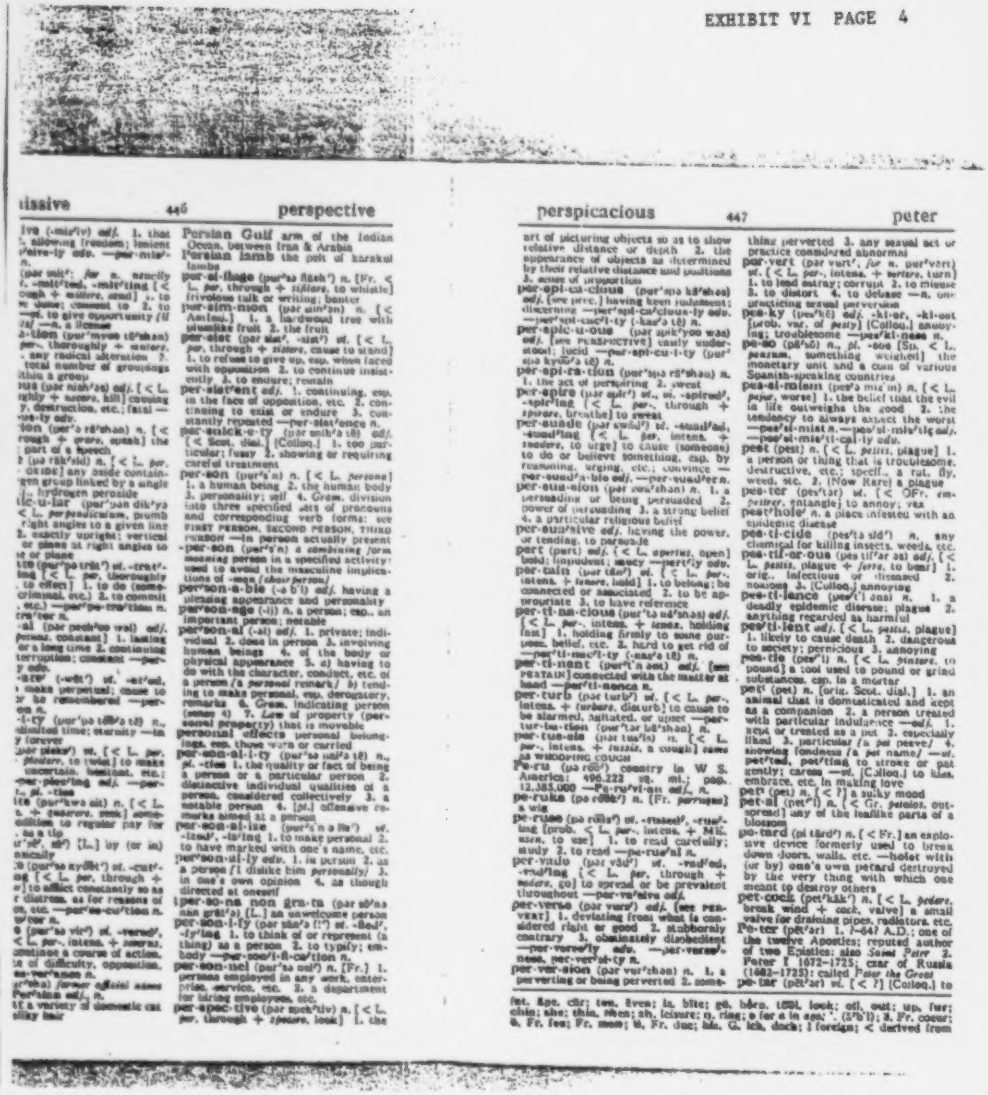
3. The duplicate load manifest was left at the previous departure point or is company policy. The person on board with me is an employee of the company and therefore need not be listed. However, his weight was computed during the weight and balance computations.

4. Attached Exhibit 3 shows that in 1987 revisions 31 & 32 were in fact completed. The pilot who had the set prior to me did versify revisions 31 & 32 were completed in 1986, it was an oversight on his part that they were not entered as being completed.

Sincerely

AS/mkm

EXHIBIT VI PAGE 4



issive 446 perspective

ive (-mis'iv) adj. 1. that
. allowing freedom; lenient
s'sive·ly adv. —per·mis'-
n.
(par mit'; for n. usually
t. -mit'ted, -mit'ting [<
ough + mittere, send] 1. to
e done; consent to 2. to
—vi. to give opportunity [if
ts] —n. a license
a·tion (pur'myoo tā'shan)
per-, thoroughly + mutare,
. any radical alteration 2.
total number of groupings
ithin a group
ous (par nish'as) adj. [< L.
ghly + necare, kill] causing
y, destruction, etc.; fatal —
ous·ly adv.
tion (pur'a rā'shan) n. [<
rough + orare, speak] the
part of a speech
e (pa räk'sid) n. [< L. per,
OXIDE] any oxide contain-
gen group linked by a single
., hydrogen peroxide
ic·u·lar (pur'pan dik'ya
< L. perpendiculum, plumb
right angles to a given line
2. exactly upright; vertical
or plane at right angles to
e or plane
ate (pur'pa trāt') vt. -trat'-
ing [< L. per, thoroughly
to effect] 1. to do (some-
criminal, etc.) 2. to commit
, etc.) —per'pe·tra'tion n.
tra'tor n.
·al (par pech'oo wal) adj.
petuus, constant] 1. lasting
or a long time 2. continuing
terruption; constant —per-
y adv.
·ate (-wāt') vt. -at'ed,
make perpetual; cause to
r be remembered —per-
on n.
·i·ty (pur'pa too'a tē) n.,
limited time; eternity —in
y forever
(par plek') vt. [< L. per,
plectere, to twist] to make
uncertain, hesitant, etc.;
per·plex'ing adj. —per-
., pl. -ties
ite (pur'kwa zit) n. [< L.
s + quaerere, seek] some-
addition to regular pay for
, as a tip
ur'sē', sā') [L.] by (or in)
ntically
te (pur'sa kyoot') vt. -cut'-
ng [< L. per, through +
e] to afflict constantly so as
r distress, as for reasons of
on, etc. —per'se·cu'tion n.
u'tor n.
e (pur'sa vir') vi. -vered',
< L. per-, intens. + severus,
continue a course of action,
te of difficulty, opposition,
se·ver'ance n.
ur'sha) former official name
Per'sian adj., n.
t a variety of domestic cat
silky hair

Persian Gulf arm of the Indian Ocean, between Iran & Arabia

Persian lamb the pelt of karakul lambs

per·si·flage (pur'sa fläzh') n. [Fr. < L. per, through + sifilare, to whistle] frivolous talk or writing; banter

per·sim·mon (par sim'an) n. [< Amind.] 1. a hardwood tree with plumlike fruit 2. the fruit

per·sist (par sist', -zist') vi. [< L. per, through + sistere, cause to stand] 1. to refuse to give up, esp. when faced with opposition 2. to continue insistently 3. to endure; remain

per·sist'ent adj. 1. continuing, esp. in the face of opposition, etc. 2. continuing to exist or endure 3. constantly repeated —per·sist'ence n.

per·snick·e·ty (par snik'a tē) adj. [< Scot. dial.] [Colloq.] 1. too particular; fussy 2. showing or requiring careful treatment

per·son (pur's'n) n. [< L. persona] 1. a human being 2. the human body 3. personality; self 4. Gram. division into three specified sets of pronouns and corresponding verb forms: see FIRST PERSON, SECOND PERSON, THIRD PERSON —in person actually present

-per·son (pur's'n) a combining form meaning person in a specified activity: used to avoid the masculine implications of -man [chairperson]

per·son·a·ble (-a b'l) adj. having a pleasing appearance and personality

per'son·age (-ij) n. a person; esp., an important person; notable

per'son·al (-al) adj. 1. private; individual 2. done in person 3. involving human beings 4. of the body or physical appearance 5. a) having to do with the character, conduct, etc. of a person [a personal remark] b) tending to make personal, esp. derogatory, remarks 6. Gram. indicating person (sense 4) 7. Law of property (personal property) that is movable

personal effects personal belongings, esp. those worn or carried

per·son·al·i·ty (pur'sa nal'a tē) n., pl. -ties 1. the quality or fact of being a person or a particular person 2. distinctive individual qualities of a person, considered collectively 3. a notable person 4. [pl.] offensive remarks aimed at a person

per·son·al·ize (pur's'n a līz') vt. -ized', -iz'ing 1. to make personal 2. to have marked with one's name, etc.

per'son·al·ly adv. 1. in person 2. as a person [I dislike him personally] 3. in one's own opinion 4. as though directed at oneself

‡per·so·na non gra·ta (par sō'na nän grät'a) [L.] an unwelcome person

per·son·i·fy (par sän'a fī') vt. -fied', -fy'ing 1. to think of or represent (a thing) as a person 2. to typify; embody —per·son'i·fi·ca'tion n.

per·son·nel (pur'sa nel') n. [Fr.] 1. persons employed in any work, enterprise, service, etc. 2. a department for hiring employees, etc.

per·spec·tive (par spek'tiv) n. [< L. per, through + specere, look] 1. the art of picturing objects so as to show relative distance or depth 2. the appearance of objects as determined by their relative distance and positions 3. sense of proportion

perspicacious 447 peter

per·spi·ca·cious (pur'spa kā'shas) adj. [see prec.] having keen judgment; discerning —per'spi·ca'cious·ly adv. —per'spi·cac'i·ty (-kas'a tē) n.

per·spic·u·ous (par spik'yoo was) adj. [see PERSPECTIVE] easily understood; lucid —per·spi·cu·i·ty (pur'spa kyōō'a tē) n.

per·spi·ra·tion (pur'spa rā'shan) n. 1. the act of perspiring 2. sweat

per·spire (par spīr') vt., vi. -spired', -spir'ing [< L. per-, through + spirare, breathe] to sweat

per·suade (par swād') vt. -suad'ed, -suad'ing [< L. per-, intens. + suadere, to urge] to cause (someone) to do or believe something, esp. by reasoning, urging, etc.; convince —per·suad'a·ble adj. —per·suad'er n.

per·sua·sion (par swā'zhan) n. 1. a persuading or being persuaded 2. power of persuading 3. a strong belief 4. a particular religious belief

per·sua'sive adj. having the power, or tending, to persuade

pert (purt) adj. [< L. apertus, open] bold; impudent; saucy —pert'ly adv.

per·tain (par tān') vi. [< L. per-, intens. + tenere, hold] 1. to belong; be connected or associated 2. to be appropriate 3. to have reference

per·ti·na·cious (pur'ta nā'shas) adj. [< L. per-, intens. + tenax, holding fast] 1. holding firmly to some purpose, belief, etc. 2. hard to get rid of —per'ti·nac'i·ty (-nas'a tē) n.

per·ti·nent (pur't'n ant) adj. [see PERTAIN] connected with the matter at hand —per'ti·nence n.

per·turb (par turb') vt. [< L. per-, intens. + turbare, disturb] to cause to be alarmed, agitated, or upset —per·tur·ba·tion (pur'tar bā'shan) n.

per·tus·sis (par tus'is) n. [< L. per-, intens. + tussis, a cough] same as WHOOPING COUGH

Pe·ru (pa rōō') country in W S. America: 496,222 sq. mi.; pop. 12,385,000 —Pe·ru'vi·an adj., n.

pe·ruke (pa rōōk') n. [Fr. perruque] a wig

pe·ruse (pa rōōz') vt. -rused', -rus'ing [prob. < L. per-, intens. + ME. usen, to use] 1. to read carefully; study 2. to read —pe·rus'al n.

per·vade (par vād') vt. -vad'ed, -vad'ing [< L. per, through + vadere, go] to spread or be prevalent throughout —per·va'sive adj.

per·verse (par vurs') adj. [see PERVERT] 1. deviating from what is considered right or good 2. stubbornly contrary 3. obstinately disobedient —per·verse'ly adv. —per·verse'ness, per·ver'si·ty n.

per·ver·sion (par vur'zhan) n. 1. a perverting or being perverted 2. something perverted 3. any sexual act or practice considered abnormal

per·vert (par vurt'; for n. pur'vart) vt. [< L. per-, intens. + vertere, turn] 1. to lead astray; corrupt 2. to misuse 3. to distort 4. to debase —n. one practicing sexual perversion

pes·ky (pes'kē) adj. -ki·er, -ki·est [prob. var. of pesty] [Colloq.] annoying; troublesome —pes'ki·ness n.

pe·so (pā'sō) n., pl. -sos [Sp. < L. pensum, something weighed] the monetary unit and a coin of various Spanish-speaking countries

pes·si·mism (pes'a miz'm) n. [< L. pejor, worse] 1. the belief that the evil in life outweighs the good 2. the tendency to always expect the worst —pes'si·mist n. —pes'si·mis'tic adj. —pes'si·mis'ti·cal·ly adv.

pest (pest) n. [< L. pestis, plague] 1. a person or thing that is troublesome, destructive, etc.; specif., a rat, fly, weed, etc. 2. [Now Rare] a plague

pes·ter (pes'tar) vt. [< OFr. empestrer, entangle] to annoy; vex

pest'hole' n. a place infested with an epidemic disease

pes·ti·cide (pes'ta sīd') n. any chemical for killing insects, weeds, etc.

pes·tif·er·ous (pes tif'ar as) adj. [< L. pestis, plague + ferre, to bear] 1. orig., infectious or diseased 2. noxious 3. [Colloq.] annoying

pes·ti·lence (pes't'l ans) n. 1. a deadly epidemic disease; plague 2. anything regarded as harmful

pes'ti·lent adj. [< L. pestis, plague] 1. likely to cause death 2. dangerous to society; pernicious 3. annoying

pes·tle (pes''l) n. [< L. pinsere, to pound] a tool used to pound or grind substances, esp. in a mortar

pet¹ (pet) n. [orig. Scot. dial.] 1. an animal that is domesticated and kept as a companion 2. a person treated with particular indulgence —adj. 1. kept or treated as a pet 2. especially liked 3. particular [a pet peeve] 4. showing fondness [a pet name] —vt. pet'ted, pet'ting to stroke or pat gently; caress —vi. [Colloq.] to kiss, embrace, etc. in making love

pet² (pet) n. [< ?] a sulky mood

pet·al (pet''l) n. [< Gr. petalos, outspread] any of the leaflike parts of a blossom

pe·tard (pi tärd') n. [< Fr.] an explosive device formerly used to break down doors, walls, etc. —hoist with (or by) one's own petard destroyed by the very thing with which one meant to destroy others

pet·cock (pet'käk') n. [< L. pedere, break wind + cock, valve] a small valve for draining pipes, radiators, etc.

Pe·ter (pēt'ar) 1. ?–64? A.D.; one of the twelve Apostles; reputed author of two Epistles: also Saint Peter 2. Peter I 1672–1725; czar of Russia (1682–1725): called Peter the Great

pe·ter (pēt'ar) vi. [< ?] [Colloq.] to

fat, āpe, cär; ten, ēven; is, bīte; gō, hôrn, tōōl, look; oil, out; up, fur; chin; she; thin, then; zh, leisure; ŋ, ring; ə for a in ago; ', (ā'b'l); ë, Fr. coeur; ö, Fr. feu; Fr. mon; ü, Fr. duc; kh, G. ich, doch; ‡ foreign; < derived from

EXHIBIT VI PAGE 5

135.83 OPERATING INFORMATION REQUIRED

(a) The operator of an aircraft must provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them:

- (1) A cockpit checklist.
- (2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate.
- (3) Pertinent aeronautical charts.
- (4) For IFR operations, each pertinent navigational enroute, terminal area, and approach and letdown chart.
- (5) For multiengine aircraft, one-engine-inoperative climb peformance data and if the aircraft is approved for use in IFR or over-the-top operations, that data must be sufficient to enable the pilot to determine compliance with §135.181(a)(2).

(b) Each cockpit checklist required by paragraph (a)(1) of this section must contain the following procedures:

- (1) Before starting engines;
- (2) Before takeoff;
- (3) Cruise;
- (4) Before landing;
- (5) After landing;
- (6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

- (1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.
- (2) Emergency operation of instruments and controls.
- (3) Engine inoperative procedures.
- (4) Any other emergency procedures necessary for safety.

135.85 CARRIAGE OF PERSONS WITHOUT COMPLIANCE WITH THE PASSENGER-CARRYING PROVISIONS OF THIS PART

The following persons may be carried aboard an aircraft without complying with the passenger-carrying requirements of this part:

(a) A crewmember or other employee of the certificate holder.

(b) A person necessary for the safe handling of animals on the aircraft.

(c) A person necessary for the safe handling of hazardous materials (as defined in Subchapter C of *Title 49 CFR).

(d) A person performing duty as a security or honor guard accompanying a shipment made by or under the authority of the U.S. Government.

(e) A military courier or a military route supervisor carried by a military cargo contract air carrier or commercial operator in operations under a military cargo contract, if that carriage is specifically authorized by the appropriate military service.

(f) An authorized representative of the Administrator conducting an enroute inspection.

(g) A person, authorized by the Administrator, who is performing a duty connected with a cargo operation of the certificate holder.

135.87 CARRIAGE OF CARGO INCLUDING CARRY-ON BAGGAGE

No person may carry cargo, including carry-on baggage, in or on any aircraft unless—

(a) It is carried in an approved cargo rack, bin, or compartment installed in or on the aircraft;

(b) It is secured by an approved means; or

(*Not published herein—Ed.)

26 US (LO) 1 INCH = 18 NM

JEPPESEN

US (LO) 25 1 INCH = 18 NM

UNITED STATES

LOW ALTITUDE ENROUTE CHARTS

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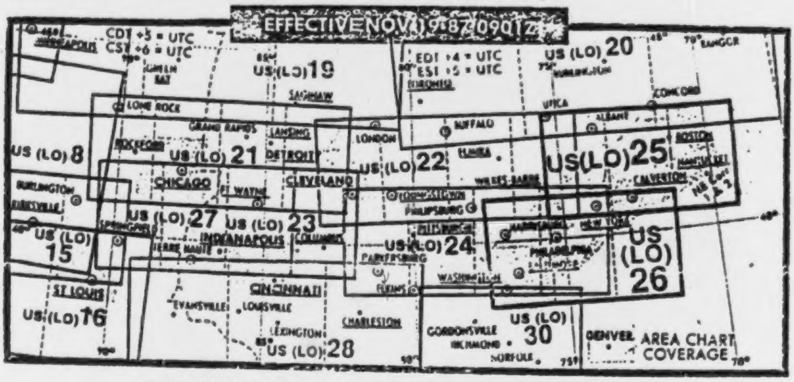
MEETS FAA REQUIREMENTS FOR AERONAUTICAL CHARTS

Within the continental U.S., the airways shown on these charts are effective up to but not including 18,000' MSL. At 14,500' MSL and above, all airspace is controlled (Continental Control Area). Shaded blue areas shown on the face of enroute charts designate airspace that is not controlled below the Continental Control Area. The Jet Route structure is superimposed to show its relationship with the low altitude airways. For operational detail of Jet Routes at or above 18,000' MSL use US(HI) charts.

REVISION DATA

CHART US(LO)25 OCT 23-87 Airways and Ints desig/redesig in the New York Area (Phase II of the Expanded East Coast Plan implementation). V-106 redesig Gardner, Mass VOR—Manchester VOR. V-2 revoked Gardner, Mass VOR—Lawrence VOR. Boston/New York ARTCC boundary redesig.

CHART US(LO)26 OCT 23-87 Airways and Ints desig/redesig in New Jersey, New York and Pennsylvania (Phase II of the Expanded East Coast Plan implementation). Andrews, Md VOR freq changed. Boston/New York ARTCC boundary redesig.


EFFECTIVE NOV 19 87 0901Z
CDT +5 = UTC
CST +6 = UTC
EDT +4 = UTC
EST +5 = UTC
US (LO) 19
US (LO) 20
US (LO) 8
US (LO) 21
US (LO) 22
US (LO) 25
US (LO) 27
US (LO) 23
US (LO) 24
US (LO) 15
US (LO) 26
US (LO) 16
US (LO) 28
US (LO) 30
MINNEAPOLIS
GREEN BAY
SAGINAW
LONE ROCK
GRAND RAPIDS
LANSING
DETROIT
LONDON
BUFFALO
ELMIRA
UTICA
ALBANY
CONCORD
BANGOR
BOSTON
ROCKFORD
CHICAGO
FT WAYNE
CLEVELAND
YOUNGSTOWN
WILKES-BARRE
CALVERTON
BURLINGTON
KIRKSVILLE
SPRINGFIELD
INDIANAPOLIS
COLUMBUS
PITTSBURGH
PHILIPSBURG
HARRISBURG
NEW YORK
PHILADELPHIA
TERRE HAUTE
PARKERSBURG
WASHINGTON
ST LOUIS
CINCINNATI
ELKINS
EVANSVILLE
LOUISVILLE
LEXINGTON
CHARLESTON
GORDONSVILLE
RICHMOND
NORFOLK
DENVER
AREA CHART COVERAGE

COMMUNICATIONS INFORMATION BEGINS ON REVERSE SIDE COVER PANEL

COMMUNICATIONS CONT'D FROM BACK COVER PANEL

OLD BRIDGE, N.J. (NE Corr 2p7C) p5B
Old Bridge. McGuire App(R)/Dep(R) 120.25.

OTIS ANGB, MASS. (NE Corr 1p3C) p3C
Otis ANGB. Otis *App(R&R2) 118.2. *Dep(R&R2) 118.2 118.75. Twr 121.0. Gnd 121.6. GCA.

OXFORD, CONN. (NE Corr 1p1B) p2C
Waterbury-Oxford. New York App/Dep 120.75.

PALMER, MASS. p2A
Metropolitan. Bradley App(R)/Dep(R) 125.8.

PAWTUCKET, R.I. (NE Corr 1p3A) p2D
North Central State. Quonset *App(R)/*Dep(R) 125.9. C 124.35.

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PERKASIE, PA. (NE Corr 2p6D) p5A
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PHILADELPHIA, p5A
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Philadelphia Int'l ATIS 133.4. Philadelphia App(R) (270°-089° 128.4, 090°-269° 126.6) 125.4 127.35. (TCA 2: 270°-089° 128.4, 090°-269° 126.6, Landing Rwy 17-35 125.4). Dep(R) (270°-089° 124.35, 090°-269° 119.75). Twr 118.5. Gnd 121.9. Cpt 118.85.
Northeast Philadelphia *ATIS 121.15.

READING, PA. (NE Corr 2p6A) p4B
General Spaatz ATIS 127.1. Reading App(R&R2)/Dep(R&R2) (N 119.25, S 125.15). Twr 119.9. Gnd 121.9. Harrisburg App(R)/Dep(R) 124.1 when Reading App/Dep inop.

READINGTON, p1C-5A
N.J. (NE Corr 2p7A)
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Trenton-Robbinsville. McGuire App(R)/Dep(R) 120.25.

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Dulles Int'l ATIS 134.85. Dulles App(R&ARSA) (331°-090° 126.1, 091°-240° 124.65, 241°-330° 120.45) Dep (R&ARSA) (300°-120° 125.05, 121°-299° 126.65). Twr 120.1. Gnd 121.9. Cpt 127.35. 125.8 as assigned.
Washington Nat'l ATIS 132.65. Washington App(R) (E 124.2, W 119.85) (Final: E 118.3, W 124.7) (TCA 1: E 124.2, W 119.85). Dep(R) (E 125.55, W 118.1). Twr 119.1 (Helicopters 120.75). Gnd 121.7. Cpt 128.25.

EDGEWOOD ARSENAL, MD.
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25/26 US(LO)

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(b) When using an instrument approach facility other than ILS, no person may use an autopilot at an altitude above the terrain that is less than 50 feet below the approved minimum descent altitude for that procedure, or less than twice the maximum loss specified in the approved Airplane Flight Manual or equivalent for a malfunction of the autopilot under approach conditions, whichever is higher.

(c) For ILS approaches, when reported weather conditions are less than the basic weather conditions in §91.105 of this chapter, no person may use an autopilot with an approach coupler at an altitude above the terrain that is less than 50 feet above the terrain, or the maximum altitude loss specified in the approved Airplane Flight Manual or equivalent for the malfunction of the autopilot with approach coupler, whichever is higher.

(d) Without regard to paragraphs (a), (b), or (c) of this section, the Administrator may issue operations specifications to allow the use, to touchdown, of an approved flight control guidance system with automatic capability, if—

  (1) The system does not contain any altitude loss (above zero) specified in the approved Aircraft Flight Manual or equivalent for malfunction of the autopilot with approach coupler; and

  (2) The Administrator finds that the use of the system to touchdown will not otherwise adversely affect the safety standards of this section.

(e) This section does not apply to operations conducted in rotorcraft.

135.95 AIRMEN: LIMITATIONS ON USE OF SERVICES

No certificate holder may use the services of any person as an airman unless the person performing those services—

(a) Holds an appropriate and current airman certificate; and

(b) Is qualified, under this chapter, for the operation for which the person is to be used.

135.97 AIRCRAFT AND FACILITIES FOR RECENT FLIGHT EXPERIENCE

Each certificate holder shall provide aircraft and facilities to enable each of its pilots to maintain and demonstrate the pilot's ability to conduct all operations for which the pilot is authorized.

135.99 COMPOSITION OF FLIGHT CREW

(a) No certificate holder may operate an aircraft with less than the minimum flight crew specified in the aircraft operating limitations or the Aircraft Flight Manual for that aircraft and required by this part for the kind of operation being conducted.

(b) No certificate holder may operate an aircraft without a second in command if that aircraft has a passenger seating configuration, excluding any pilot seat, of ten seats or more.

135.100 FLIGHT CREMEMBER DUTIES

(a) No certificate holder shall require, nor may any flight crewmember perform, any duties during a critical phase of flight except those duties required for the safe operation of the aircraft. Duties such company required calls made for such nonsafety related purposes as ordering galley supplies and confirming passenger connections, announcements made to passengers promoting the air carrier or pointing out sights of interest, and filling out company payroll and related records are not required for the safe operation of the aircraft.

(b) No flight crewmember may engage in, nor may any pilot in command permit, any activity during a critical phase of flight which could distract any flight crewmember from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties. Activities such as eating meals, engaging in nonessential conversations within the cockpit and nonessential communications between the cabin and cockpit crews, and reading publications not related to the proper conduct of the flight are not required for the safe operation of the aircraft.

(c) For the purposes of this section, critical phases of flight includes all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

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U.S. Department
of Transportation
**Federal Aviation
Administration**

FLIGHT STANDARDS DISTRICT OFFICE
ADMINISTRATION BLDG. - SUITE 235
REPUBLIC AIRPORT - ROUTE 110
FARMINGDALE, NEW YORK 11735
Telephone: (516) 694-5530

October 22, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert B. Girona
465 East 10th Street
New York, New York 10009

Dear Mr. Girona:

Personnel of this office are investigating an incident which occurred on 09-29-87 at approximately 2300 involving the operation of Cessna aircraft N77FA at Teterboro Airport, New Jersey. Information furnished this office indicates that this aircraft was operated without an aircraft flight manual and with out of date VFR sectionals. Operations of this type may be contrary to sections of the Federal Aviation Regulations.

Before attempting to arrive at any conclusions, we would like to offer you the opportunity of giving your version of the incident and to describe any mitigating circumstances which might have a bearing on the problem. Your reply should be accomplished within 10 days following receipt of this letter. Include flight logs and specify leg's you acted as pilot-in-command on September 29, 1987.

Should the investigation substantiate that a violation did or did not occur, you will be informed accordingly. A self-addressed envelope is provided for your convenience. Office hours are from 8:00 am to 4:30 pm Monday through Friday. **DIRECT ALL INQUIRIES TO INSPECTOR JOSEPH STUPPIELLO.**

Sincerely,

David B. Hill, Jr.
Manager, Farmingdale FSDO

Enclosures

[redacted] EXHIBIT IX PAGE 2

November 16, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Inspector Joseph Stuppiello
Flight Standards District Office
Administration Bldg. - Suite 235
Republic Airport - Route 110
Farmingdale, New York 11735

Dear Inspector Stuppiello,

In response to a letter dated October 22, 1987, from David Hill, regarding the incident which occurred on September 29, 1987 at Teterboro Airport, Teterboro, New Jersey, I offer the following information.

On the evening of September 29, C310, N77FA, was thoroughly preflighted and found to be in compliance with the Federal Aviation Regulations. All required documents were on board the aircraft. The flight was scheduled to be operated in the New York area, therefore, the aircraft was equipped with a current New York Aeronautical Sectional as well as appropriate navigational enroute, terminal area, and approach and letdown charts, as specified in FAR Part 135.83(a)(3).

Regarding your request for flight logs, copies of completed load manifests are kept at the principal operations base of Flight Group, Inc. 3310 West Ridge Pike, Pottstown, Pennsylvania 19464. Please contact the Chief Pilot, Benjamin Scheufele.

I hope this information will be helpful to your investigation. Please direct all inquiries to Chief Pilot Benjamin Scheufele.

Very truly yours,

Robert B. Girona

cc Benjamin Scheufele

EXHIBIT IX PAGE 3

U.S. Department
of Transportation
Federal Aviation
Administration

FLIGHT STANDARDS DISTRICT OFFICE
ADMINISTRATION BLDG. - SUITE 235
REPUBLIC AIRPORT - ROUTE 110
FARMINGDALE, NEW YORK 11735
Telephone: (516) 694-5530

October 22, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. R. Savoy
626 New Street
River Vale, New Jersey 07675

Dear Mr. Savoy:

Personnel of this office are investigating an incident which occurred on 09-29-87 at approximately 11:00 p.m. involving the operation of Cessna - 310R aircraft N77FA at Teterboro Airport, New Jersey. Information furnished this office indicates that this aircraft was operated without aircraft flight manual and with outdated VFR Sectionals. Operations of this type may be contrary to sections of the Federal Aviation Regulations.

Before attempting to arrive at any conclusions, we would like to offer you the opportunity of giving your version of the incident and to describe any mitigating circumstances which might have a bearing on the problem. Your reply should be accomplished within 10 days following receipt of this letter. Include copies of flight log's and specify route leg's you acted as pilot-in-command on September 29, 1987.

Should the investigation substantiate that a violation did or did not occur, you will be informed accordingly. A self-addressed envelope is provided for your convenience. Office hours are from 8:00 am to 4:30 pm Monday through Friday. **DIRECT ALL INQUIRIES TO INSPECTOR JOSEPH STUPPIELLO.**

Sincerely,

David B. Hill, Jr.
Manager, Farmingdale FSDO

Enclosures

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November 6, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Inspector Joseph Stuppiello
Flight Standards District Office
Administration Bldg. - Suite 235
Republic Airport - Route 110
Farmingdale, New York 11735

Dear Inspector Stuppiello:

In response to a letter dated October 22, 1987, from David Hill, regarding the incident which occurred on September 20, 1987 at Teterboro Airport, Teterboro, New Jersey, I offer the following information.

On the evening of September 20, C310, N77FA, was thoroughly preflighted and found to be in compliance with the Federal Aviation Regulations. All required documents were on board the aircraft. The flight was scheduled to be operated in the New York area, therefore, the aircraft was equipped with a current New York Aeronautical Sectional as well as appropriate navigational enroute, terminal area, and approach and letdown charts, as specified in FAR Part 135.83(a)(3).

Regarding your request for flight logs, copies of completed load manifests are kept at the principal operations base of Flight Group, Inc. 3310 West Ridge Pike, Pottstown, Pennsylvania 19464. Please contact the Chief Pilot, Benjamin Scheufele.

I hope this information will be helpful to your investigation. Please direct all inquiries to Chief Pilot Benjamin Scheufele.

Very truly yours,

Ronald Savoy

cc Benjamin Scheufele

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November 16, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Inspector Joseph Stuppiello
Flight Standards District Office
Administration Bldg. - Suite [illegible]
Republic Airport - Route 110
Farmingdale, New York 11735

Dear Inspector Stuppiello:

In response to a letter dated October 22, 1987, from David Hill, regarding the incident which occurred on September 29, 1987 at Teterboro Airport, Teterboro, New Jersey, I offer the following information.

On the evening of September 29, C310, N777A, was thoroughly preflighted and found to be in compliance with the Federal Aviation Regulations. All required documents were on board the aircraft. The flight was scheduled to be operated in the New York area, therefore, the aircraft was equipped with a current New York Aeronautical Sectional as well as appropriate navigational enroute, terminal area, and approach and letdown charts, as specified in FAR Part 135.83[illegible].

Regarding your request for flight logs, copies of completed load manifests are kept at the principal operations base of [illegible] Flight Group, Inc. 7310 West Ridge Pike, Pottstown, Pennsylvania [illegible]. Please contact the Chief Pilot, Benjamin Scheufele.

I hope this information will be helpful to your investigation. Please direct all inquiries to Chief Pilot Benjamin Scheufele.

Very truly yours,

Robert B. Giron

cc Benjamin Scheufele

EXHIBIT IX PAGE 6

U.S. Department
of Transportation
Federal Aviation
Administration

FLIGHT STANDARDS DISTRICT OFFICE
ADMINISTRATION BLDG. - SUITE 235
REPUBLIC AIRPORT - ROUTE 110
FARMINGDALE, NEW YORK 11735-1583
Telephone: (516) 694-5530

October 23, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Flight Group, Inc.
Pottstown Limirick Airport
RD#3
Pottstown, PA 19464

Dear Sirs:

During the ramp inspection of N77FA, CE-310 at Teterboro Airport, Teterboro, New Jersey on 09-29-87 the following conditions were observed by Inspector Stuppiello:

1. No airplane flight manual on board.

2. Outdated VFR Sectional Charts.

3. Load manifest not prepared in duplicate

Based on the evidence available at this time it appears that you may not be in compliance with the Code of Federal Regulations.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration. Within 10 days of receipt of this letter, we willingly permit any evidence or statements you would like to make concerning each item listed. Please forward copies of flight logs for N77FA crew, for the night in question. Your statements will be considered in our investigation.

If you fail to respond within the specified time, our report will be processed without the benefit of your statement.

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Should the investigation substantiate that a violation did or did not occur, you will be informed accordingly. A self-addressed envelope is provided for your convenience. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday. **DIRECT ALL INQUIRIES TO INSPECTOR JOSEPH STUPPIELLO.**

Sincerely,

David B. Hill, Jr.
Manager, Farmingdale FSDO

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November 4, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Flight Standards District Office
Administration Building - Suite [illegible]
Republic Airport - Route 110
Farmingdale, New York 11735-15[illegible]

Attention Joseph Stuppiello

Gentleman:

In response to your letter dated October 2[illegible], 1987, regarding the ramp inspection of N77FA, C310 at Teterboro Airport on September 29, 1987, we offer the following:

1. The airplane was ferried to Teterboro on Monday, September 28, 1987. At this time the aircraft flight manual was on board. During the pilot's preflight on Tuesday, September 29, the manual was still on board. During the ramp check, the inspector examined the cockpit of N77FA without the supervision of the pilot. During this time, the aircraft documents and checklists were removed and inspected. Also, the flight bags (personal and private property) of the pilots were opened and searched. While this occurred, the pilots were being questioned by a second inspector. The pilot in command was then asked to produce the aircraft flight manual.

   Our investigation of this matter involved a discussion with the pilot, who stated that by the time the inspector left the aircraft it was in such disarray that he could not locate anything including the aircraft's flight manual.

Since this airplane left Teterboro on the evening of September 29 with an aircraft flight manual, the approximate value of which is $250.00, (and our pilot does not have it) [illegible] Flight Group, would like to know where it is.

However, another C310 manual was delivered to Teterboro to be placed in N77FA prior to its departing on September 30, 1987.

2. The aircraft had on board current IFR navigational enroute, terminal area, and approach and letdown charts, and a current New York Sectional Aeronautical Chart. Also on board was an expired New Orleans Sectional Aeronautical Chart.

   According to FAR Part 135.83(a)(3), pertinent aeronautical charts must be accessible to the pilot. N77FA was not scheduled for a flight in the New Orleans area. We, therefore, believe that the aircraft was in accordance with the Code of Federal Regulations.

3. Owing to the length of time it took to conduct this ramp inspection, the customer's deadline at the bank could not be met by our aircraft. The customer cancelled the flight, the run did not go, and revenue was lost. Therefore, a load manifest was not prepared.

You request, in your letter of October 23, copies of flight logs for N77FA crew for the night of September 29, 1987. Please verify this request. Are you referring to the schedule of the nightly run or do you want copies of the load manifests for each leg?

Please be assured that we endeavor to ensure strict compliance with the Federal Aviation Regulations. If we can provide any additional information, please do not hesitate to contact us.

Very truly yours,

Benjamin Scheufele
Chief Pilot

cc T. Allan McArtor
Allentown General Aviation District Office
Teterboro Flight Standards District Office

November 5, 1987

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

T. Allen McArtor
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591

Dear Mr. McArtor:

Your attention is requested concerning an incident occurring at Teterboro Airport, Teterboro, New Jersey, on September 29, 1987.

On the above date, a ramp inspection was performed on C310, N77FA, an aircraft of this company. A letter from the examining Flight Standards District Office stating the results of this inspection is enclosed. Also enclosed is our response to this correspondence.

Flight Group, Inc. operates several routes flown by various aircraft to and from Teterboro, New Jersey, approximately six days a week. We make every effort to ensure compliance with Federal Aviation Regulations and lend our cooperation to FAA officials. However, we find questionable the manner in which the Code of Regulations was attempted to be enforced.

The aircraft, N77FA, was boarded by an FAA inspector without the supervision of the pilot in command. Personal flight cases of the flight crew were opened and searched without the consent of the crew. During this time, the aircraft flight manual could not be located.

The ramp inspection was conducted at such length that this company's customer could not make a bank deadline, and the flight was cancelled. This cancellation resulted in revenue loss not only to this company but also to our customer and their customers, one of which was the Federal Reserve Bank.

We are dubious as to the execution of the above inspection, and we are requesting your assistance in determining if this is the approved method for the enforcement of the Federal Aviation Regulations.

Thank you for your attention to this matter.

Very truly yours,

Benjamin Scheufele
Chief Pilot

Enclosures

[illegible] FLIGHT CHARTER EXHIBIT IX PAGE 12 Page 9

R.D. #3 Pottstown-Li[illegible]

Appendix 8

Date of Flight	Time	Make & Model	N#	Flt. No.	Customer
4/[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]	[illegible]	TO	ON	NO. PAX	GTOW	MAX TOW	[illegible]	CG RANGE FWD.	AFT.
[illegible]	1159	[illegible]	2016		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	2038	[illegible]	[illegible]	0	[illegible]	55[illegible]	[illegible]	[illegible]	[illegible]
HED	2[illegible]	[illegible]	2230	0	4532	5500	[illegible]	[illegible]	[illegible]
[illegible]		[illegible]		0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

AIRCRAFT TIME: **CREW:**

TODAY: [illegible] **P.I.C.** Robert [illegible] /**P.I.C. SIGNATURE** [illegible]

FORWARD: 70,9 **S.I.C.** [illegible]

TOTAL: **OTHER**

SPECIAL INSTRUCTIONS:

NOTES:

Fuel:

Oil O.K.

EXHIBIT X

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EXHIBIT X PAGE 1

135.83 OPERATING INFORMATION REQUIRED

(a) The operator of an aircraft must provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them:
  (1) A cockpit checklist.
  (2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate.
  (3) Pertinent aeronautical charts.
  (4) For IFR operations, each pertinent navigational enroute, terminal area, and approach and letdown chart.
  (5) For multiengine aircraft, one-engine-inoperative climb peformance data and if the aircraft s approved for use in IFR or over-the-top operations, that data must be sufficient to enable the pilot to determine compliance with §135.181(a)(2).

(b) Each cockpit checklist required by paragraph (a)(1) of this section must contain the following procedures:
  (1) Before starting engines;
  (2) Before takeoff;
  (3) Cruise;
  (4) Before landing;
  (5) After landing;
  (6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:
  (1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.
  (2) Emergency operation of instruments and controls.
  (3) Engine inoperative procedures.
  (4) Any other emergency procedures necessary for safety.

135.85 CARRIAGE OF PERSONS WITHOUT COMPLIANCE WITH THE PASSENGER-CARRYING PROVISIONS OF THIS PART

The following persons may be carried aboard an aircraft without complying with the passenger-carrying requirements of this part:

(a) A crewmember or other employee of the certificate holder.
(b) A person necessary for the safe handling of animals on the aircraft.
(c) A person necessary for the safe handling of hazardous materials (as defined in Subchapter C of *Title 49 CFR).
(d) A person performing duty as a security or honor guard accompanying a shipment made by or under the authority of the U.S. Government.
(e) A military courier or a military route supervisor carried by a military cargo contract air carrier or commercial operator in operations under a military cargo contract, if that carriage is specifically authorized by the appropriate military service.
(f) An authorized representative of the Administrator conducting an enroute inspection.
(g) A person, authorized by the Administrator, who is performing a duty connected with a cargo operation of the certificate holder.

135.87 CARRIAGE OF CARGO INCLUDING CARRY-ON BAGGAGE

No person may carry cargo, including carry-on baggage, in or on any aircraft unless—

(a) It is carried in an approved cargo rack, bin, or compartment installed in or on the aircraft;
(b) It is secured by an approved means; or

(*Not published herein—Ed.)

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EXHIBIT XI PAGE 1

135.37 MANAGEMENT PERSONNEL REQUIRED

(a) Each certificate holder, other than one who uses only one pilot in the certificate holder's operations, must have enough qualified management personnel in the following or equivalent positions to ensure safety in its operations:
  - (1) Director of operations.
  - (2) Chief pilot.
  - (3) Director of maintenance.

(b) Upon application by the certificate holder, the Administrator may approve different positions or numbers of positions than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform its operations safely under the direction of fewer or different categories of management personnel.

(c) Each certificate holder shall—
  - (1) Set forth the duties, responsibilities, and authority of the personnel required by this section in the manual required by §135.21;
  - (2) List in the manual required by §135.21 the name of the person or persons assigned to those positions; and
  - (3) Within 10 working days, notify the FAA Flight Standards District Office charged with the overall inspection of the certificate holder of any change made in the assignment of persons to the listed positions.

135.39 MANAGEMENT PERSONNEL QUALIFICATIONS

(a) *Director of operations.* No person may serve as director of operations under §135.37(a) unless that person knows the contents of the manual required by §135.21, the operations specifications, the provisions of this part and other applicable regulations necessary for the proper performance of the person's duties and responsibilities and:
  - (1) The director of operations for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate must—
    - (i) Hold or have held an airline transport pilot certificate; and
    - (ii) Have at least 3 years of experience as pilot in command of an aircraft operated under this part, Part 121 or *Part 127 of this chapter; or
    - (iii) Have at least 3 years of experience as director of operations with a certificate holder operating under this part, Part 121 or *Part 127 of this chapter.
  - (2) The director of operations for a certificate holder who is not conducting any operation for which the pilot in command is required to hold airline transport pilot certificate must—
    - (i) Hold or have held a commercial pilot certificate; and
    - (ii) Have at least 3 years of experience as a pilot in command of an aircraft operated under this part, Part 121 or *Part 127 of this chapter; or
    - (iii) Have at least 3 years of experience as director of operations with a certificate holder operating under this part, Part 121 or *Part 127 of this chapter.

(b) *Chief pilot.* No person may serve as chief pilot under §135.37(a) unless that person knows the contents of the manual required by §135.21, the operations specifications, the provisions of this part and other applicable regulations necessary for the proper performance of the person's duties, and:
  - (1) The chief pilot of a certificate holder conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate must—
    - (i) Hold a current airline transport pilot certificate with appropriate ratings for at least one of the types of aircraft used; and
    - (ii) Have at least 3 years of experience as a pilot in command of an aircraft under this part, Part 121 or *Part 127 of this chapter.
  - (2) The chief pilot of a certificate holder who is not conducting any operation for which the pilot in command is required to hold an airline transport pilot certificate must—
    - (i) Hold a current, commercial pilot certificate with an instrument rating. If an instrument rating is not required for the pilot in command under this part, the chief pilot must hold a current, commercial pilot certificate; and

Amend #20
eff 1-6-87

(*Not published herein — Ed.)

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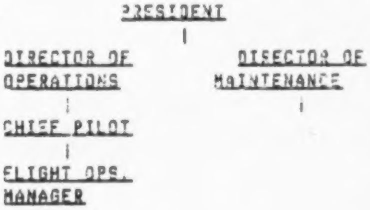
EXHIBIT XI PAGE 2

FLIGHT CHARTER

ATCO NO. 3EA - 16

COMPANY ORGANIZATION

The company structure is depicted below. Each person may be assigned duties in addition to his primary job function. All major duties, responsibilities, and authorities are set forth in the following pages.


PRESIDENT
DIRECTOR OF OPERATIONS
DIRECTOR OF MAINTENANCE
CHIEF PILOT
FLIGHT OPS. MANAGER

Page 4
Date 01/27/98
Revision 20

FLIGHT CHARTER

ATCO NO. 3EA-169

IDENTIFICATION OF MANAGEMENT PERSONNEL

TITLE	NAME	HOME PHONE NUMBER
PRESIDENT	Thomas O. Miller	215-763-7856 215-469-7014 PAGER 215-870-2793 CAR
DIRECTOR OF OPERATIONS	Thomas O. Miller	215-763-7856
CHIEF PILOT	Robert Hunsberger	215-257-6462
DIRECTOR OF MAINTENANCE	Frank M. Chesonis	215-582-6667
FLIGHT OPS MANAGER -TEB	Frank Cooper	609-871-4540
COMPANY CHECK AIRMEN	Robert Hunsberger	215-257-6462
	Sally Koch	215-699-8155
APPROVED FLIGHT INSTRUCTORS	Thomas O. Miller	
	Robert Hunsberger	
	Sally Koch	
	Arnold Purnsley	
	Dennis Schell	

APPENDIX V

David l. Pechan
940 N Pine Rd
Linden, CA 95236

April 27, 1988

House Subcommittee on Aviation
2251 Rayburn House Office Building
Washington, D.C. 20515

TESTIMONY OF DAVE PECHAN BEFORE THE SUBCOMMITTEE ON AVIATION IN SUPPORT OF LEGISLATION PROTECTING AIRLINE PILOTS THAT EXPOSE AIRSAFETY VIOLATIONS. Hearing April 27, 1988

Gentlemen I sincerely thank you for giving me this opportunity to tell you of the hardship I have suffered for exposing to the FAA major safety problems at West Air/United Express of California. Because the list of confirmed safety problems that I exposed is so long I will summarize most of them. These issues were brought to the attention of the companies management and then brought to the FAA office in Fresno, California who has inspection responsibility for United Express. This story began April 15, 1987, after eleven months with the company and a growing concern for safety problems I wrote a letter to company management outlining the need to improve ramp safety at San Francisco International before someone walks into a prop and is killed. April 30, 1987, I was elected to the company pilot Professional Standards Committee by my fellow pilots. By May 9, 1987, I had become an outspoken critic of air operations at the carrier. Though I had not passed the companies written test for upgrade to captain, this was not the reason for my safety concerns but merely the catalyst that helped me overcome the fear of coming forward. I wrote an initial 20 page letter to the company management outlining my initial concerns. From the outset I wanted them to understand I was not trying to hurt the company but I felt things were so bad someone must come forward. Attached as exhibit A is the cover letter that went along to the owners of the company. The long letter outlined the following items of concern:

a/Ground school weaknesses and testing improprieties

b/Training program teaches illegal descent below decision height

c/Improper interpretation of the duty time regulation

d/Company produced performance data for the EMB-110 aircraft produced overweight takeoffs and landings

Retracing the result of these complaints today we find:

a/The training program was in such disarray that no currently FAA approved training program existed between March 1, 1987 and June 16, 1987. Neither the FAA of the company apparently realized the approval had expired until the FAA issued a retroactive extension to the program that had expired several months before. Please see attached Exhibit B, obtained through the Freedom of Information Act. The training program was completely re-written and in place July 1, 1987 when I attended recurrent ground school with four company captains,my over all score was 97%.

b/ On May 13, 1987 the company issued a memo to all pilots correcting its previously improper training of flight crews relative to descending below decision height on instrument approaches in the fog.

c/ The FAA found no violations, in the technical sense, of the duty time regulation.

d/FAA and the company confirmed the performance data was inaccurate by late May 1987. The company immediately began a rewrite, while publicly denying the data was inaccurate. Mr. Ed Hammonds, FAA Flight Standards District Office manager, told me in a meeting in his office September 3, 1987 that he approved continued use of the inaccurate data because it would have been impossible for the company to use only the aircraft manufacturers data and accomplish turning around the aircraft in fifteen minutes, as the schedule required.

West Air/United Express was not an ALPA carrier, but ALPA has to date been the only group to help and support me through this ordeal. The FAA would not offer any credible answer why the inaccurate performance data ever was introduced in the cockpit. ALPA's Engineering and Airsafety Department, after looking closely at the company performance data and procedures, advised me that I should no longer rely strictly on company produced performance data, they were convinced it was seriously in error.

After contacting Mr. Jim Schmidt, EMB-110 flight manager, on May 13, 1987 and explaining that I would no longer be involved in illegal operations for United Express brought on by the inaccurate performance data I was suspended. Following threats of legal action on my behalf by ALPA, the company reinstated me to flight duties June 1, 1987. The company claimed it was a "none disciplinary" suspension but they did make attempts to not pay me for the time I was off.

Upon returning to work in June, pilots from all over the company began contacting me explaining in detail hazards they saw asking me to act as a spokesman. I agreed to forward additional safety concerns to the company and FAA while protecting the reporting pilots identities. I forwarded letters:

a/June 16, 1987

Improper checking of engine power availability

Improper treatment of engine failure on takeoff

Company demanded the use of less than max power for takeoff

Improper use of rolling takeoffs from short runways

b/June 19, 1987

Company improperly issuing Operations Directives to flight crews ordering them to ignore standard emergency procedures for engine fire. Please see attached exhibit G

When these items were brought to the companies attention they reluctantly made all the corrections except the proper treatment of engine failure on takeoff. This issue remains the most pressing safety hazard on the airline today. These aircraft are "legally" operated at weights that preclude a single engine climb adequate to clear obstacles ahead. The importance of this issue is demonstrated by two recent commuter accidents. An AVAIR commuter plane departed Raleigh/Durham airport recently, unable to climb the aircraft crashed into the trees a half mile beyond the end of the runway. A very recent accident involving an engine fire immediately after takeoff at Seattle also might be a candidate for inclusion in this group.

The EMB-110 aircraft operation manual states under the title: Decision to Abort, at pg 3-14, that if adequate runway ahead remains and an engine failure occurs reduce power land the aircraft. This position is supported by significant professional authority nationwide including EMB-110 captains at West Air and ASA. Despite the fact hard data in the aircraft flight manual exists showing the aircrafts inability to climb at certain weights, West Air/United Express,with the FAA approval, continues to require crews to fly all engine failures after decision speed knowing in many cases a disaster such as Raleigh/Durham is inevitable.

By July 1, 1987, West Air/United Express managment had libeled me repeatedly and now was threatening my termination if I did not stop informing fellow crewmembers about the bad performance data they were being provided by the company. See the attached letter Exhibit C. The "non approved flight operation" I was teaching my captains was done to explain to them why I might be limiting the takeoff weights more than company data required. Certain captains had asked not to fly with me during this period of intense pressure because they did not want to be in the middle of the conflict. On July 1, 1987, I reached an agreement with Jim Schmidt, EMB-110 flight manager, that would remove me from flying with any captains that preferred to avoid the conflict. In exchange I would continue to operate legally, but I would also comply with the company demands not to tell other pilots what I knew about the inaccurate performance data. Jim stated that he needed more time to complete the rewrite of the data and after everyone in the company was using the new data and essentially operating the way I was at this time the conflicts would immediately die.

In late July 1987, the company reniged on our agreement and scheduled me to fly with Captain Ed Fletcher. Captain Fletcher was a good friend but had a currently pending FAA violation and did not want anything else to add to his problems. The company management called Captain Fletcher and told him that I must be eliminated from the company, and ordering him to take a flight with me, and "write him up" creating a scenario that would be grounds for my termination with cause. Mr. Fletcher is prepared to give sworn testimony on this issue. Luckily for me, Captain Fletcher responded he would not be their "hit man". We flew the trip and he relayed the entire dirty story.

At the completion of my flight with Captain Fletcher I submitted my resignation to the company. My feeling was it would be just a matter of time before they found someone to assist in their plot to destroy my career. I gave the company two weeks notice, four days later I was terminated, see the attached Exhibit D for their explanation.

On July 27, 1987 and July 30, 1987, I submitted letters to the Fresno office of the FAA outlining a summary of these safety problems. In addition, at this time I focused on the companies efforts to force crews to carry to little fuel. The company wanted to reduce the fuel loads to the lowest possible levels because the lower the fuel weight, the higher the number of passengers they could load aboard. The company produced the infamous "Fuel Cheat Sheet". This document listed the company required fuel for every destination and approved alternate in the system. The company collected data by recording the fuel burned over the route from a fuel totalizer on board the aircraft. Their data base was 6% lower than it should have been because the aircraft fuel totalizer is calibrated for Brazilian Jet fuel which is formulated to a different density than US jet fuel.

Attached as Exhibit E, is a document that I have just recently recieved from afriend inside the company. The internal memo dated August 8, 1987 was from Cheryl La Fetra, an EMB-110 pilot who developed the fuel sheets, to Jim Schmidt, EMB-110 flight manager. Please look to the third page entitled: "Fuel Sheet revised using the following guidlines:", under note 2, the memo states:

> "Fuel burn calculated from actual fuel totalizer readings collected over the last 12 months by both C. La Fetra and L. Sewell. This data used if 5 or more data points per leg were available. Minimum VFR fuel calculated as the average of all data points for that leg, plus 450# for reserve but not to be less than the largest recorded

fuel burn."

Now looking to example 2, of this procedure you can see the incredible abuse of safety perpetrated by this company. SMF (Sacramento Metro) to ACV (Arcata) the average of the five recorded fuel burns was 650 pounds, but on at least one occasion the trip required 1200 pounds to reach its destination. The company therefor authorized 1200 pounds of fuel total, this meant no reserve fuel as required by the Federal Aviation Regulations was on board. Whenever the trip burn exceeded the average burn the company calculated the aircraft was burning reserve fuel to reach its destination. FAA regulations require reserve fuel of 450 pounds on board the EMB-110 at the destination. This shows the company knew that on occasion all 1200 pounds of fuel on board might be needed to reach the destination. A knowing intentional act by the company.

The company has denied ever punishing a crewmember for carrying extra fuel but I have a sworn deposition taken before the California Unemployment Appeals Board where West Air/United Express successfully fought to stop unemployment compensation to Andre Cunningham. They alleged that Andre had violated company policy by carrying extra fuel as one of the grounds for his termination, and a justification for denying him unemployment compensation. Please see Exhibit H.

Attached as Exhibit F, is a letter dated September 3, 1987 from the Fresno office of the FAA directing the company to stop forcing crews into using the company fuel loads. The company obviously ignored the order since the date of Andre Cunninghams hearing was October 26, 1987. To date the FAA has never ordered the improper fuel data out of the cockpit, it has only ordered it not be mandatory.

I submit that the system has rewarded failure in this case. The current management team of West Air/United Express are still in place, still not safety oriented only profit oriented. Had the company management or the FAA been doing a highly professional job prior to my coming forward,none of these problems would have existed. I should now be a captain on the EMB-120 aircraft, or first officer on the four engine BA-146 jet. But the bearer of the bad news has been killed by the system. This has not been by accident. The same day I forwarded my resignation to West Air/United Express I sent my resume and cover letter requesting employment to Wings West/American Eagle. West Air chief pilot Marty McDermott knew that I was planning to try to obtain employment there and knew that that company had previously expressed interest in hiring me. I have learned that some member of the United Express management team called the chief pilot of Wings West and told him not to hire Dave Pechan, he is a trouble maker. The Wings West Chief Pilot apparently made a note to himself so he wouldn't forget the name and posted it on the bulliten board outside his office door. My contacts have seen the note posted.

Repeated attempts to obtain an interview have been futile, even though a former United Express Captain, Gil Merckel, who has flown with me extensively and is now employed by Wings West, has repeatedly recommended me for interview.

I have applied for flying work ranging from air charter to the major airlines. I have applied for jobs flying air tankers fighting forest fires, 31 applications in all. In nine months I have been interviewed only by United Parcel Service. I drove 800 miles at my own expense for the interview February 4, 1988. They have even refused to acknowledge I have been rejected. Yet Mr. Bill Reynolds, who did the interview, commented that he felt their company should be hiring people of my caliber.

I fully recognize that there is little likelyhood of me continuing my flying career. Blackballing is alive and well in the airline industry today.

I have been injured severly for refusing to fly aircraft in an illegal or unsafe manner. My career has been destroyed but I am not the only victim of the intimidation campaign. All the pilots now flying for United Express know that management is prepared to destroy them should they deem it necessary. This will absolutely guarantee no pilots will come forward again at this carrier.

This airline continues to treat other employees in a similar manner. Mr. John Vaudrin, former station manager at San Francisco International was fired April 1, 1988, for disclosing to United Airlines executives that he could not operate the ramp safely and efficiently with the number of employees United Express management was limiting him to. This disclosure ended his job but United Officials did apply pressure to United Express and all the recommended personell have been hired.

Flight attendant Debbie Lott, who felt the only way to improve conditions on the airline was to unionize through the Association of Flight Attendants was fired April 19, 1988. When 63 out of 65 United Express flight attendants submitted authorization to act cards requesting a union election, West Air management began having mandatory anti union meetings in violation of the Federal Railway Labor Act. Mrs. Lott was refused entry into a mandatory meeting and was threatened by company management in its efforts to remove her from the auditorium. A shouting match ensued. The next day she was ordered to a meeting at Corporate headquarters. When she arrived with a union representative at her side the meeting was immediately canceled by the company. Later that day she recieved a telegram suspending her, followed by her termination April 19, 1988.

The pattern is clear, the abuse is widespread, the FAA has been to date unwilling or incapable of fully correcting the problems. Your action to protect activists for airsafety is a first step. The reason the airline system is not in worse shape than it is today is

Because individuals like Debbie Lott, John Vaudrin, myself, and working people throughout aviation and the government are sacrificing everything to fight the plague destroying this industry. I submit any industry that rewards incompetence and punishes competent well motivated professionalism is a sick industry.

I swear that the foregoing is true and correct to the best of my knowledge. I appreciate the opportunity to address this body today.

Dave Pechan

Exhibir
A

West Air Airlines
Fresno Air Terminal

May 9, 1987

Attn: Mr Tim Flynn, Mr Maury Gallagher

First Officer Dave Pechan
940 N Fine Rd
Linden, Ca 95236
209-887-3178

Gentlemen:

In view of your open door policy I submit all the attached data. I feel the deficiencies in the flight training at West Air are great. In fact, so grave, that they are placing this airline at serious risk of a major aircraft accident. Which could lead this company to bankruptcy.

As harsh as some of the facts and analysis seem I honestly believe them all true. I once owned a crop dusting company- it was my life and my money on the line with every operation. I had to make the hard decision of not doing a particular operation because, no matter how good the money looked, the death, injury, environmental, and economic injury was to great. I was a very small businessman and I did not delegate go/no go authority. You have to. I forward this information because I believe you must make the policies that will be followed by flight operations tight enough to avoid placing schedule pressure above safety.

You gentlemen must set the tone of this for the entire company, especially during this time of tremendous growth and attrition.

Please recognize I am not trying to hurt you, or the company, on the contrary, I feel I would be derelict as an employee not to give you my best. I believe this is.

sincerely,

cc to: Marty Mc Dermott
Bob Angrisani
FAA, Fresno Larry DeCosta
John Bradley, ALPA

FLIGHT STANDARDS DISTRICT OFFICE
4955 E. Anderson, Suite 110
Fresno, California 93727-1573

June 16, 1987

Westair Commuter Airlines Inc.
Michael Baken, Director of Training
5770 Air Terminal Road
Fresno, CA 93727

Dear Mr. Baken:

This letter is to grant extension of Westair's initial approval for the Part 135 training program. This extension covers all revisions through number 20, and is an extension of the initial approval which expired March 31, 1987.

It is our understanding that an extensive revision will be submitted prior to July 31. This office will then conduct a complete evaluation of the training program, hopefully resulting in the issuance of final approval.

Sincerely,

JIM L. SHAMP
Principal Operations Inspector

EXhiBIT
B

Exhibit
C

UNITED EXPRESS.

July 1, 1987

Dave Pechan
940 N. Fine Rd.
Linden, CA 95236

Dear Dave:

Jim Schmidt has passed on to me your communications of June 16 and 19. These communications evidence to me that you are still having significant problems understanding our performance presentation for the EMB-110, despite additional personalized instructions. You are distributing inaccurate and incorrect information, FAR's which are inappropriate, and we have received reports that you are attempting to "instruct" other pilots in a manner contrary to our established flight operations department standards. The accusations made in your letters demonstrated a serious lack of understanding about the certification and performance of the EMB-110, and the use of appropriate charts. This disruptive behavior on your part is having a negative effect on our pilots, some of whom are requesting that they not be assigned to fly with you.

You stated upon your reassignment to flight duties that you would comply with the Company's operating procedures. We took your statement on good faith. Your actions since then lead us to believe that you may be ignoring this directive.

Effective immediately, we must insist that you discontinue all "instructional" activity and refrain from making any further communications designed to obtain other pilots acquiescence in non-approved flight operation standards and procedures. Your failure to abide by our procedures will result in disciplinary action, which may include termination. Any questions which you may have concerning our flight operations procedures should be address to Jim Schmidt, the Chief Pilot, the Director of Operations, or any corporate official. You may rest assured that any comments which you may have regarding our flight procedures will be carefully reviewed.

Sincerely,

Michael DeVincenzi
Director of Operations

MD/dm/777
cc: Human Resources

Operated by WestAir Inc.: 5570 Air Terminal Drive; Fresno, Calif. 93727 / (209)294-6915

UNITED EXPRESS.

August 4, 1987

Dave Pechan
940 N. Fine Rd.
Linden, CA 95236

Dave:

I have received your letter of resignation and I appreciate the fact that you gave us two weeks notice.

As your beliefs, however misdirected, are so strong, we feel that it would be to your best interest that we make your resignation effective today.

You will find your final check in order. It contains your accrued vacation time as well as your total flown and scheduled time until August 15th.

Sincerely,

Marty McDermott
Chief Pilot

Exhibit
D

MM/dm

Enclosure

Operated by WestAir Inc.; 5570 Air Terminal Drive; Fresno, Calif. 93727 / (209)294-6915

August 8, 1987

Cheryl - Thanks! - for clarification. Please address my comments -

Jim Schmidt

The new fuel sheet is set up as follows:

(Excerpt)

SNA to..

FAT		1+20	1200	MOD-1450	BFL-1550	SCK-1600	MF[illegible]-1600
LAX	224		750	BUR-950	ONT-1000	SAN-1150	BFL-1150

USING ACTUAL FUEL BURN DATA (five or more data points) [illegible]

Departure to destination:
Average fuel burn + standard deviation + 450# = Minimum VFR fuel

Destination to alternate:
Average fuel burn + standard deviation - 50# = Fuel to alternate

USING CALCULATED FUEL BURN DATA (less than five data points available

Departure to destination:
(Distance (via filed route) / 200) + 10 minutes + 560 PPH = Min VFR fuel

?

Destination to alternate:
((Dist (filed or reasonable) / 200) + 10 min + 560 PPH) - 50# = Fuel to alternate

? ?

OTHER MISC. INFORMATION

Average burn-block (item 1)
The average burn as noted on the fuel totalizer. Only noted if five or more data points available.

Block time (item 2)
The block time calculated using the formula above (using calculated fuel burn data). Only noted if less than five data points available.

NOTE:

There appears to be some discrepancy between "avg fuel burns" and "min VFR fuel". This is due to the difference in the standard deviations, which do not appear on the fuel sheet.

Cheryl La Fetra

Fuel burns include or exclude taxi fuel?

- Also pls send copy with changes in [illegible] highlighted - JHR -

Exhibit
E

CHERYL -

NEED A NOTE ON THE
FUEL SHEET - SIMILAR TO -

"THESE FUEL LOADS ARE MINIMUM
VALUES, ASSUMING NO DELAYS,
ICING OR ADVERSE WINDS -
③ FOR HEAD WINDS, ADD ....
② FOR ICING, ADD...
① FOR DELAYS, ADD DELAY
TIME @ 560 PPH. "

THX J-

Fuel sheet revised using following guidelines.

Alternates picked in increasing order of distance, generally considered UAX stations only (exceptions FRB, CRQ, MFR, ~~TM~~) considered only one airport in a metro area (ie SFO, OAK, SJC), attempted to have ~~on~~ at least one alternate in a area with a significantly different wx pattern.

Fuel burn calculated from actual fuel totalizer readings collected over last 12 months by both C. LaFetra & L. Sewell. This data used if 5 or more data points per leg were available. ~~fuel burn~~ Minimum VFR fuel calculated as the average of all data points for that leg (ie SFO→SMF not SFO→SMF + SMF→SFO) plus 450# for reserve but not to be less than the largest recorded fuel burn.

Ex. #1

leg	Avg	Max	Min VFR
SFO-SMF	350	600	800

Ex #2

leg	Avg	Max	Min VFR
SMF-ACV	650	1200	1200

3) If 5 data points not available fuel burn calculated as follows:

(Filed route distance in NM ÷ 200 kts + 10 mins) x 560 pph.

Min VFR fuel is calculated fuel burn + 450#.

4) Additional fuel for alternates were calculated as follows:

a) If 5 data points for the segment were available then the average – 50# was added to the MIN. VFR FUEL.

b) If data points were not available the length of the most likely route segment (no Radar vectors) ÷ 200 kts + 5 mins × 560 pph was added to the MIN VFR FUEL.

5) As more data is collected the fuel sheet will be periodically checked for continuing accuracy.

6) Additional fuel must still be carried for anticipated delays, wind, icing, etc.

FLIGHT STANDARDS DISTRICT OFFICE
4955 E. Anderson, Suite 110
Fresno, California 93727-1573

September 3, 1987

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Exhibit
F

Michael DeVincenzi
Director of Operations
WestAir Commuter Airlines, Inc.
5570 Air Terminal Dr.
Fresno, CA 93727

Dear Mr. DeVincenzi:

This letter is in reference to a number of discrepancies that have come to our attention and which need immediate action for clarification of company procedures and policy.

I Memorandums and Operations Bulletin

In reviewing operational memorandums and operational bulletins it appears there is no control over who issues these documents their subject matter, contents or tone. Therefore, immediately upon receipt of this letter a procedure must be implemented stating who is authorized to write memorandums and Operations Bulletins and who is responsible for their issuance. It is our position that only the Director of Operations, Chief Pilot, Director of In-Flight Services and Director of Training be authorized to sign and issue memorandums for their respective responsibilities. As for Operations Bulletins only the Director of Operations should be authorized to sign and issue any operations bulletin. Further it must be clarified that no other department manager or supervisor is to issue operations memorandums for another department.

It must be emphasised that all base pilot coordinators must coordinate all memos they wish to have issued with those individuals authorized to sign and issue memorandums. This eliminates outlying station coordinators from writing and distributing memos which have not been cleared by the home office.

A procedure should also be established to number memorandums so that they can be identified when two or more memos are issued on the same day, as well as to provide a tracking mechanism for those documents.

Finally, we must reiterate that this office is not receiving all memos issued by WestAir. This includes those produced by the base coordinators at out lying stations. We cannot over-emphasis the importance of establishing a procedure for guaranteeing that our office receives all documents from each department.

In concluding, these procedures, upon implementation in writing and coordinated with our office, must be followed up in the next Operations Manual Revision Number 36.

II Fuel Loading

Questions have been presented regarding the purpose of the fuel burn charts. It is our understanding that some pilots feel this is what the company wants loaded on board prior to departure and that additional fuel loads above those published will be questioned. All pilots need to be informed immediately clarifing this issue, specifically, that these charts are for planning purposes only and that it is only the captain's option to increase fuel loads. We refer you to two memos dated November 12, 1986, authorized by Dean Faulkner and December 5, 1986, authorized by yourself which referenced fuel loads. In those memos it was stated clearly when additional fuel shuld be loaded and that safety comes first before all else. In Mr. Jim Schmidt's memo dated February 13, 1987, its tone implies justification must be given for additional fuel loads, thus implying that the final decision making process has been taken from the captains. It needs to be made clear to the pilots that these charts are for planning purposes only and are not manditory except for minimum fuel. With the turn-over in pilots, memos such as this need to be re-issued occassionally and special emphasis needs to be placed on this subject in all phases of training.

In concluding, it is recommended that these procedures be published in the operations manual in order that company policy and procedure can be consistently maintained.

III Maximum Power Take-Offs

It has come to our attention that possibly maximum power take-offs are not being conducted in the static mode on the first flight of each day. The Pilot Operating Handbook (P.O.H.) does not speak to rolling take-offs in order to perform this check and due to the ram rise as ground speed increases it is important in order to obtain an accurate reading to do the check in the static mode.

Therefore, beginning immediately all crews must be informed that all max power take-offs conducted on the first flight of the day must be done in the static position and not rolling. It should be recommended to conduct this required check in a manner similiar to the noise abatement procedure, including notification to the passengers of what type of take-off is being made. This procedure must be presented to all pilots in an operations bulletin and be followed by a revision to the EMB-110 Flight Standards Manual.

VI WestAir Performance Charts

In reviewing the WestAir Performance Charts (WPC) it was noted that all take-off figures are based on separators being off. We understand that within WestAir's system operations requiring separators on during take-off are rare, and therefore the figures were determined with them off. The WPC does not speak to this fact and implies that the figures are correct for all take-offs. With this in mind it can be seen that the WPC needs a statement on each page stating that if a take-off requires the separators on the pilot must then consult the EMB-110 POH for take-off power settings.

V I EMB-110 Flight Standards Manual

It has been noted that the EMB-110 Flight Standards Manual has not been revised since its original issuance. We are all well aware that many operating procedures have been changed which would reflect the contents of this manual. In order to maintain some standardization it is imparative that this document be kept current. Therefore, you are requested to submit to this office a revision to the EMB-110 Flight Standards Manual by no later than September 30, 1987, for our review.

It is the understanding of this office that these items require major policy changes and extensive notification of many pilots in order to implements the changes addressed herein. Due to the importance of the issues presented, we appreciate your cooperation in this matter and feel it will improve the level of communication and safety with in the company.

In concluding, you are requested to inform this office in writing of the action taken on each listed item and how each request was complied with by September 30, 1987. If you have any questions regarding these items, please contact this office for guidance.

Sincerely,

JIM L. SHAMP
Principal Operations Inspector

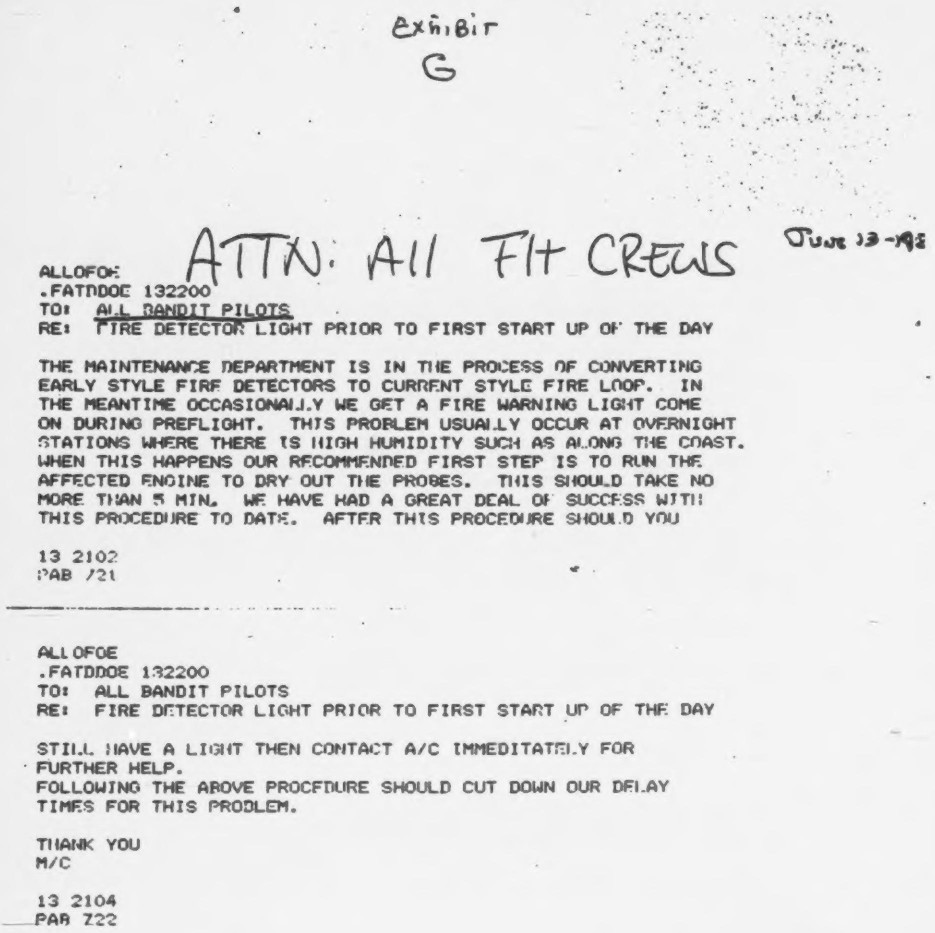


Exhibit
G

ATTN: All Flt CREWS

June 13-198

ALLOFOE
.FATDDOE 132200
TO: ALL BANDIT PILOTS
RE: FIRE DETECTOR LIGHT PRIOR TO FIRST START UP OF THE DAY

THE MAINTENANCE DEPARTMENT IS IN THE PROCESS OF CONVERTING EARLY STYLE FIRE DETECTORS TO CURRENT STYLE FIRE LOOP. IN THE MEANTIME OCCASIONALLY WE GET A FIRE WARNING LIGHT COME ON DURING PREFLIGHT. THIS PROBLEM USUALLY OCCUR AT OVERNIGHT STATIONS WHERE THERE IS HIGH HUMIDITY SUCH AS ALONG THE COAST. WHEN THIS HAPPENS OUR RECOMMENDED FIRST STEP IS TO RUN THE AFFECTED ENGINE TO DRY OUT THE PROBES. THIS SHOULD TAKE NO MORE THAN 5 MIN. WE HAVE HAD A GREAT DEAL OF SUCCESS WITH THIS PROCEDURE TO DATE. AFTER THIS PROCEDURE SHOULD YOU

13 2102
PAB 721

ALLOFOE
.FATDDOE 132200
TO: ALL BANDIT PILOTS
RE: FIRE DETECTOR LIGHT PRIOR TO FIRST START UP OF THE DAY

STILL HAVE A LIGHT THEN CONTACT A/C IMMEDITATELY FOR FURTHER HELP.
FOLLOWING THE ABOVE PROCEDURE SHOULD CUT DOWN OUR DELAY TIMES FOR THIS PROBLEM.

THANK YOU
M/C

13 2104
PAB 722

Exhibit

H

The following page 22 from the court reports official report of hearing in the case of Andre Cunningham, appeal by West Air Airlines. Dated Ootober 26, 1987

Asking the questions is West Air Corporate attorney Mr. Kent Heyman.

Answering the questions is first officer Clark Sheppard, testifying for the company after having written up Andre Cunningham.

Should the committee wish the entire transcript it is 151 pages long and available through the court reporters listed at the bottom of the page.

Q. What is company policy, as you understand it, with respect to the ascertainment of how much fuel is to be used? You indicated there's a cheat sheet that you used, and I think you also indicated Capt. Cunningham would add 200, 300 pounds to it. What is the company policy as to how the amount of fuel should be determined?

A. Well, unless exigent circumstances, for instance, known delays on the ground, head winds, icing conditions, you know you're going to hold somewhere when you get there. Things like that, my understanding is you're supposed to use what the sheet says, but it is discretionary on the captain based on experience to change that if he wishes.

Q. Was the utilization of an additional 200 to 300 pounds of fuel by Capt. Cunningham something he did on each flight?

A. Every time.

UNITED EXPRESS.

April 22, 1988

Testimony to be presented to the House Aviation Sub Committee concerning legislation to protect airline employees who are whistle-blowers.

I represent the management team of WestAir Commuter Airlines based in Fresno, California, a large regional carrier. We support legislation protecting the rights of airline employees who report safety and regulatory violations to any governmental agency. We would request, however, that the legislation address the following concerns:

1- Airlines have the responsibility, delegated by the FAA, to train operational employees and to test their knowledge and abilities. The legislation should not, in our opinion, allow that responsibility to be overridden.

   Our carrier, for example, had a pilot who embarked on a whistle-blowing campaign the day he flunked his upgrade test. We feel that his job should be protected as long as he is qualified to hold that job.

2- The legislation should require that employees make documented claims to qualify for protection. Documented claims must include at least a date, time, and place of occurrence. Some form of evidence or corroboration should be required. This would protect airlines from individuals who wish to further causes that are more appropriate to labor negotiations. It would also save the FAA valuable investigative time.

3- The legislation should address penalties for employees who make false claims. It is a tremendous task for the FAA and airlines to manage our air transportation system. Legitimate claims obviously require immediate attention. We should not, however, make laws that encourage less than serious persons to make false claims that require unnecessary investigative work that over-taxes the management system.

4- The legislation should be structured to encourage employees to bring claims to the attention of management simultaneously with making a notification to the government. It should be structured so that the carrier and the governmental agency investigate the claim and make the corrective action.

In conclusion, I would like to state that this program should be structured carefully and administered by a governmental agency such as the FAA. It should be done so in a manner that projects the seriousness with which the government, the industry, employees, and passengers treat airline safety.

Respectfully submitted,

Harlow Voorhees
Vice President of Operations

4L2032

[Whereupon, at 6:00 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

ADDITIONS TO THE RECORD

84-25 112th Street
Richmond Hill, NY 11418
April 1988

Dear Senators, Representatives and Staffs:

Federal Aviation Regulations hold flight crewmembers responsible for legal and safe aircraft operation. Unfortunately, crewmembers who comply with Federal ~~law~~ risk airline management retaliation without redress by the FAA or Federal Courts.

In the interest of public safety, I seek your assistance, to legislate a whistle blower statute protecting flight crewmembers.

regulations

Sincerely,

Conrad B. Stergas
Eastern Air Lines
B-727 Flight Engineer

(Mr. Stergas submitted a 62-page document to the Subcommittee. Exerpts from that document follow:)

TO WHOM IT MAY CONCERN: April 25, 1988

Subject: Whistle Blower Legislation

In my professional opinion, resume attached, the following summary demonstrates SEVEN management retaliatory ACTIONS to my documented concerns about illegal aircraft operations. This proves the need for a Whistle Blower Law to protect flight crewmembers and the traveling public from unsafe aircraft operations.

FEB 1984 - letter to middle management concerning aircraft flight manual and flight training.

RESULTS - ACTION 1 - APR 1, 1984, terminated as an instructor/check airman in the training department.

MAR 1984 - 279 page document to middle management concerning flight safety.

RESULTS - middle management responded - the matter was a closed issue.

MAY 1984 - forwarded summary document to senior management.

RESULTS - no response.

SEP 1984 - forwarded documents to the Airline Pilots Association (ALPA) - Operations and Training Committee.

RESULTS - the ALPA Committee Chairman concurred with the documentation but indicated there was nothing he could do about it.

APR 1985 - forwarded summary document to new senior management.

APR/MAY - had two meetings with new senior management.

MAY 7 - refused to operate an aircraft with unknown fuel quantity on board.

RESULTS - ACTION 2 - MAY 13, 1985, removed from flight and pay status.

ACTION 3 - MAY 20, 1985, officially terminated.

- JUN 5, 1985, unofficially reinstated.

ACTION 4 - SEP 4, 1985, improper grievance procedure. First stage grievance hearing concerning 1985 termination backpay was held prior to my notification. This violated the contract. I grieved the grievance and then continued both grievances.

MAR 18, 1986 - received illegal annual simulator "Proficiency Check Report - Second Officer."

RESULTS - APR 19, 1986, received legal "Proficiency Check Report - Second Officer."

JUL 6, 1986 - reported illegal aircraft operation to the FAA.

RESULTS - ACTION 5 - JUL 7, 1986, removed from flight status.

- about JUL 14, 1986, reinstated to flight status.

MAY 18, 1987 - reported to the company an airborne vibration which could have rendered the aircraft illegal for flight.

RESULTS - Captain of aircraft made a maintenance log book entry.

- company maintenance removed the aircraft from service.

MAY 19, 1987 - there was a discussion in the cockpit about minimum equipment dispatch.

RESULTS - company removed the aircraft from passenger service.

- ACTION 6 - MAY 20, 1987, company removed me from flight status.

JUN 19, 1987 - ACTION 7 - officially terminated again with results of Sept. 4, 1985 improper grievance procedure attached.

AUG 20, 1987 - hand delivered to Mr. Del Balzo, FAA Director, Eastern Region, 170 pages of documentation concerning illegal aircraft operation at Eastern Air Lines.

JAN 4, 1988 - Mr.Castleberry, FAA Director, Southern Region, denied access to the Eastern Air Lines letter which describes compliance of the Federal Aviation Regulations.

FEB 12, 1988 - the Air Line Pilots Association's Operation, Analysis and Training Committee appealed the above denial by the FAA.

MAR [illegible], 1988 - the FAA requested pilot name information concerning EIR 87 EA 270092 that I had previously submitted on AUG 20, 1987.

MAR 22, 1988 - the Office of the Inspector General of the Department of Transportation initiated hot line complaint number 8IH - 127 - I000 concerning the status of the FAA report number EIR 87 EA 270092.

Conrad B. Stergas
Eastern Air Lines
B-727 Flight Engineer

RESUME

BS Civil Engineering

Military Helicopter Pilot - Vietnam 1967 - 1968
- Flight Instructor
- Rank: Captain

Eastern Air Lines - hired 1973
- furloughed 1974

1974 - 1978 - Copilot B-727 1,100 hours
B-737 900 hours

Eastern Air Lines - recalled from furlough 1978

Eastern Air Lines Second Officer Simulator Instructor - 1978 - 1984 JFK-MIA B-727 1,500 hours

DOT - FAA Licenses - Airline Transport Pilot
- B-727 Type Rating
- Instructor: Airplane & Helicopter
- Flight Engineer

DOT - Canada Lic. - Airline Transport Pilot
- B-737 Type Rating
- Grumman G-159 Type Rating

Total Flight Time - 10,000 hours

April 1988

To Whom It May Concern:

The following summary, in my professional opinion, demonstrates airline management retaliation.

On February 24, 1984, Eastern Air Lines published B-727 Standardization Meeting minutes which stated proper fueling procedures for B-727 aircraft with inoperative fuel quantity indicators. Eastern Air Lines' B-727 Aircraft Flight Manual was not subsequently changed to reflect proper fueling procedures.

On March 23, May 18, 1984, and April 9, 1985, I wrote letters expressing concern; and on April 19 and May 2, 1985, I attended meetings with Eastern Air Lines Senior Management in Miami to discuss my same concern regarding improper fueling procedures of B-727 aircraft with inoperative fuel quantity indicators.

On May 7, 1985, I refused to operate an aircraft with unknown fuel quantity on board due to improper fueling procedures. Only after Eastern Air Lines' decision to follow proper fueling procedures, did I depart on the aircraft.

On May 13, 1985, Eastern Air Lines removed me from flight and pay status because I refused to comply with an order that I operate an aircraft which was improperly fueled - in clear violation of the Federal Aviation Regulations.

On May 20, 1985, Eastern Air Lines terminated my employment. (See Attachment 1)

On June 5, 1985, after an informal meeting, Eastern Air Lines elected to reinstate my employment and stated that there would be no record of the termination in my file and that they would pay me as if the termination had never occurred.

On October 30, 1985, I was forced to operate an aircraft with an unknown fuel quantity on board due to improper fueling procedures. I filed a timely NASA report under 14 CFR 91.57.

On November 15, 1985, the Eastern Air Lines' B-727 Aircraft Flight Manual was changed to reflect proper fueling procedures.

On July 6, 1986, I was forced to operate a B-727 aircraft with all three engine oil temperature indicators inoperative. I called the FAA at 10:45 p.m. in Phoenix, Arizona to report Federal law violations and stated that I would have to operate the aircraft in the same condition the next day. The FAA inspector wrote a "record of telephone conversation" report and sent it to the FAA Principal Operations Inspector for Eastern Air Lines in Miami.

On July 7, 1986, one of the three inoperative engine oil temperature indicators was written up in the aircraft maintenance log book at the end of the first flight in Kansas City. Eastern Air Lines' maintenance in Kansas City signed off the engine oil temperature indicator by swapping the indicators and entered in the log book "ground checked okay"--but Kansas City maintenance did not run up any engines. After arrival at LaGuardia, I was again directed not to write up all three inoperative engine oil temperature indicators in the aircraft maintenance log book. Some conversations concerning these violations are tape recorded.

On July 7, 1986 at 2045 hours, Eastern Airlines again removed me from flight status.

On July 9, 1986, Eastern Air Lines directed me in writing to report to a meeting on July 10 to ascertain all the events that took place on July 6 and 7, 1986.

On July 10, 1986, Eastern Air Lines rescinded the July 9, 1986 letter, but directed me in writing "to contact Captain B. Stephens and make an appointment to meet with him as soon as possible."

On July 11, 1986, ALPA Attorney John Loomos sent a letter to Eastern Air Lines to determine the meeting date and what would be discussed with Captain B. Stephens, Vice President - Flying Operations & System Chief Pilot. Eastern Air Lines did not respond. I filed timely NASA reports under 14 CFR 91.57 for July 6 and 7, 1986. To the best of my knowledge, the FAA took no action concerning these Federal ~~law~~ regulation violations.

On August 6, 1986, improper fueling procedures were still being used by Eastern Air Lines. I filed a "Line Pilot Report" concerning this incident. Since August 6, 1986, I have not witnessed any improper fueling procedures.

On May 18, 1987, there was an airborne vibration which could have rendered the aircraft illegal for flight.

On May 19, 1987, there was a discussion about minimum equipment dispatch.

On June 19, 1987, Eastern Air Lines again terminated my employment.

On May 7, 1985, October 30, 1985, July 6 and 7, 1986, August 6, 1986, and May 18 and 19, 1987, I assisted the Captain, pilot in command, as a Second Officer, flight engineer, in a pre-flight action concerning the mechanical condition of the aircraft as stated in Flight Operations Manual, Page 9,:

> "...assist the Captain in a safe operation of the aircraft..." and "...responsible to the Captain for the pre-flight, through-flight and post-flight of the aircraft..." (See Attachment 2)

Federal Aviation Regulation 14 CFR 121.563, Reporting mechanical irregularities, states, "the pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time." When the Captain DETERMINED TO UTILIZE AN AIRCRAFT FOR FLIGHT, THAT IN MY OPINION WAS ILLEGAL, I brought to his attention important safety and legal factors, and, in some incidents, that a report had to be made to the company.

This was considered to be threatening, intimidating, coercing and interfering by Eastern Air Lines' Management, on page 6 of the June 19, 1987 termination letter, (see Attachment 3); while the Eastern Air Lines' Flight Operations Manual, Page 8, the Federal Aviation Regulations and the Federal Aviation Administration support me in this matter as follows:

Flight Operations Manual, Page 8:

> "The Region Director and Chief Pilot also ensures flight crew compliance with Federal Aviation Regulations and Eastern Operating Specifications..."

Federal Aviation Regulations:

> 14 CFR 91.29, 91.30, 121.59, 121.61, 121.303, 121.307, 121.363, 121.563, 121.663, 121.701, and 121.709.

Federal Aviation Administration:

> Mr. Castleberry, FAA Director, Southern Region - September 24, 1987 letter: "Therefore, a captain or the certificate holder through the dispatcher could not release an aircraft for flight if it was believed the aircraft was unairworthy. In such a case, a logbook entry of the discrepancy or discrepancies would be required in which case a new airworthiness release of the aircraft would be required."

(See Attachment 4)

On August 20, 1987, an FAA Enforcement Investigative Report number EIR 87 EA 270092 was initiated concerning some of the above documentation.

On October 27, 1987, my 1987 termination was described on page 107-108, line 2503-2525 in the Government Activities and Transportation Committee Hearings of the U.S. House of Representatives. (See Attachment 5)

On January 4, 1988, Mr. Castleberry, FAA Director, Southern Region, denied access to the Eastern Air Lines letter which describes compliance of the Federal Aviation Regulations.

On February 12, 1988, the Air Line Pilots Association's Operations, Analysis and Training Committee appealed the above denial by the FAA. (See Attachment 6)

On March 3, 1988, the FAA requested pilot name information concerning EIR 87 EA 270892 that I had previously submitted on August 20, 1987. (See Attachment 7)

On March 22, 1988, the Office of the Inspector General of the Department of Transportation initiated hot line complaint number 8IH-127-I000 concerning the status of the FAA report number EIR 87 EA 270892.

Further documentation concerning this matter is available upon request: (212) 988-6612/3.

In my opinion, the above Eastern Airlines documentation necessitates a full investigation into the following issues:

1. Can the FAA withhold an air carrier's compliance with the Federal Aviation Regulations to be proprietary in nature?

2. Do flight crewmembers individually have a responsibility to comply with the Federal Aviation Regulations?

3. Does Eastern Air Lines have an understanding with the FAA that allows the pilot in command (Captain) to determine an aircraft's airworthiness by leaving it up to the pilot in command to decide whether or not a mechanical irregularity is written in the aircraft maintenance logbook?

4. Does the pilot in command (Captain) have the authority to order another flight crewmember to do something that is either illegal or in violation of the Federal Aviation Regulations?
    a) during other than flight time?
    b) during flight time?
5. Does the Railway Labor Act address the issue of unfair labor practices?

Concurrent Resolutions, HR 262, March 10, 1988 and SR 107, March 22, 1988: paragraph (1)(a), express full investigation, "with emphasis on the public interest in - (a) the assignment and maintenance of safety as the highest priority in air commerce." In my opinion, the above Eastern Airlines' documentation necessitates a strong "yes" vote to HR 262 and SR 107.

In my opinion, the 1985 and 1987 termination letters clearly indicate Eastern Air Lines' violation of Federal ~~FAR~~ regulations and Eastern Air Lines' unjust tactics to discredit my documented concerns about illegal aircraft operations and flight safety.

In my opinion, my well publicized removal from flight status and terminations by Eastern Air Lines could serve as an example to inhibit other flight crewmembers from upholding the Federal Aviation Regulations.

In my opinion, the above Eastern Airlines' terminations characterize a needed whistle blower statute to protect flight crewmembers and the traveling public from unsafe aircraft operations.

In the Federal case, Pavolini v. Bard-Air Corp. 645 F2d 144 (1981), the United States Appeals Court for the Second Circuit on page 148 stated: "Congress may well wish to consider protecting in an appropriate way those who help prevent the loss of life from improper operation or maintenance of aircraft." (See Attachment 8)

To protect the professional pilot status of those who reported safety violations prior to the provisions of the Whistle Blower Bill, I hereby request your assistance to include an added provision to the bill as follows:

> "The provisions of this act shall also protect any person who, at the time of enactment of this legislation, has previously and timely filed with the Secretary of Labor a written complaint alleging that a discharge or discrimination similar to that prohibition in this section has occurred."

Suggested location of added provision:

H.R. 4113 dated: March 9, 1988
    sec. 613. Protection of Employee Making Disclosure.
        add: (a) (3)

H.R. 4023 dated: February 25, 1988
    sec. 1119. Protection of Employee.
        add: (a) (6)

H.R. 3812 dated: December 18, 1987
    sec. 1119. Employee Protection.
        add: (a) (4) Inclusion. -

Sincerely,

Conrad B. Stergas
Eastern Airlines
B-727 Flight Engineer